

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TENNESSEE
3 GREENEVILLE

4 UNITED STATES OF AMERICA, DOCKET NO. CR-2-09-96
5 . CR-2-03-26
6 GOVERNMENT, .
7 VS. . GREENEVILLE, TN
8 . . APRIL 12, 2010
9 ROBERT RAY SAYNE, . 1:57 P.M.
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11 TRANSCRIPT OF SENTENCING
12 BEFORE THE HONORABLE J. RONNIE GREER
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 FOR THE GOVERNMENT: U.S. DEPARTMENT OF JUSTICE
16 HELEN C.T. SMITH, AUSA
17 U.S. COURTHOUSE.
18 220 WEST DEPOT STREET
19 GREENEVILLE, TN 37743

20 FOR THE DEFENDANT: GUY W. BLACKWELL, ESQ.
21 138 SAYLOR ROAD
22 GRAY, TN 37615

23 COURT REPORTER: KAREN J. BRADLEY
24 RPR-RMR
25 U.S. COURTHOUSE
 220 WEST DEPOT STREET
 GREENEVILLE, TN 37743

26 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
27 PRODUCED BY COMPUTER.

1 (CALL TO ORDER OF THE COURT AT 1:57 P.M.)

2 THE COURT: ALL RIGHT. MS. HOPSON WILL YOU
3 CALL THE NEXT CASE PLEASE.

4 THE CLERK: UNITED STATES OF AMERICA VERSUS
5 ROBERT R. SAYNE, CASE NUMBER CR-2-09-96 AND CASE NUMBER
6 CR-2-03-26.

7 MR. BLACKWELL: YOUR HONOR, IF I COULD HAVE THE
8 COURT'S INDULGENCE, I WAS HANDED AN AGREED PRELIMINARY
9 ORDER OF FORFEITURE RIGHT BEFORE COURT STARTED, AND MR.
10 SAYNE HAS BEEN IN CUSTODY IN CLAIBORNE COUNTY, I NEED JUST
11 A COUPLE OF MINUTES TO TALK TO HIM AND GET THAT SIGNED.

12 THE COURT: ALL RIGHT. I'LL GIVE YOU THAT.

13 (DISCUSSION BETWEEN MR. BLACKWELL AND THE DEFENDANT)

14 MR. BLACKWELL: YOUR HONOR, WE'RE READY.

15 THE COURT: ALL RIGHT. THANK YOU,
16 MR. BLACKWELL.

17 ALL RIGHT. IN CASE NUMBER 09-CR-96, MR. SAYNE
18 IS BEFORE THE COURT THIS AFTERNOON FOR SENTENCING AFTER
19 HIS CONVICTION IN THE CASE OF COUNTS 1 AND 2. COUNT 1
20 CHARGED THE MAKING OF A FALSE STATEMENT TO THE UNITED
21 STATES AND COUNT 2 CHARGED WIRE FRAUD. ALSO PENDING IS A
22 PETITION SEEKING REVOCATION OF MR. SAYNE'S TERM OF
23 SUPERVISED RELEASE IN CASE NUMBER 03-CR-96.

24 LET'S TAKE UP HIS SENTENCING IN CASE -- I SAID
25 96, 03-CR-26.

1 LET'S TAKE UP SENTENCING IN CASE NUMBER
2 09-CR-96 FIRST. IN THAT CASE A PRESENTENCE REPORT HAS
3 BEEN PREPARED AND DISCLOSED TO ALL PARTIES. THE
4 PRESENTENCE REPORT ESTABLISHES AN ADVISORY GUIDELINE
5 SENTENCING RANGE OF 27 TO 33 MONTHS IN THE CASE.

6 THERE IS ONE OBJECTION BY THE GOVERNMENT. THE
7 GOVERNMENT CONTENDS THAT UNDER SECTION 2B1.19C THERE
8 SHOULD BE A TWO LEVEL ENHANCEMENT BECAUSE THE OFFENSE OF
9 WIRE FRAUD INVOLVED SOPHISTICATED MEANS. BY STATUTE MR.
10 SAYNE FACES A TERM OF IMPRISONMENT NOT TO EXCEED 5 YEARS
11 WITH RESPECT TO COUNT 5 AND NOT TO EXCEED 20 YEARS WITH
12 RESPECT TO COUNT 2.

13 LET'S TAKE UP THE, THE OBJECTION OF THE
14 GOVERNMENT FIRST. MS. SMITH, DOES THE GOVERNMENT HAVE
15 WITNESSES ON THAT OBJECTION?

16 MS. SMITH: I DO, YOUR HONOR. IN FACT,
17 MR. BLACKWELL AND I DISCUSSED THIS BEFORE WE GOT STARTED.
18 I HAVE TWO WITNESSES. AGENT SCOWN WILL ADDRESS THE
19 SOPHISTICATED MEANS AND THEN OFFICER THORNTON WILL DISCUSS
20 THE OTHER MATTERS, AND IT MIGHT SAVE TIME JUST TO PUT ALL
21 THE PROOF IN AND THEN TO HEAR ARGUMENT ON THE
22 SENTENCING.

23 THE COURT: I WILL DO THAT IF MR. BLACKWELL --

24 MS. SMITH: IS THAT OKAY WITH YOU?

25 MR. BLACKWELL: THAT'S FINE WITH ME, YOUR

1 HONOR.

2 THE COURT: ALL RIGHT. LET'S JUST HEAR ALL THE
3 WITNESSES THEN AND THEN I'LL TAKE THE MATTER UP.

4 CALL YOUR FIRST WITNESS.

5 MS. SMITH: THE UNITED STATES CALLS DREW SCOWN,
6 YOUR HONOR. AND I HAVE A SMALL POWER POINT, I DON'T KNOW
7 WHAT I NEED TO DO TO MAKE SURE IT'S ON THE SCREEN.

8 DREW SCOWN, GOVERNMENT'S WITNESS, SWORN

9 MS. SMITH: I'VE GOT COPIES OF THE POWER POINT
10 TOO.

11 THE CLERK: IS THIS FOR THE WITNESS?

12 MS. SMITH: NO, MA'AM -- WELL, YES, MA'AM, I'M
13 SORRY.

14 OKAY.

15 MR. BLACKWELL: YOUR HONOR, IF IT WOULD HELP
16 EXPEDITE MATTERS, WE'RE WILLING TO STIPULATE TO WHAT'S ON
17 PAGES 2 AND 3 OF THE POWER POINT. IT'S BASICALLY
18 HISTORICAL INFORMATION THAT'S CONTAINED IN THE PRESENTENCE
19 REPORT.

20 THE COURT: ALL RIGHT. THAT'S FINE, TO THE
21 EXTENT THAT WILL SPEED IT UP. MS. SMITH, THAT'S -- I
22 DON'T HAVE A COPY OF IT, YOU'LL HAVE TO SHOW IT TO ME ON
23 THE SCREEN.

24 MS. SMITH: I HAVE A TECHNICAL DIFFICULTY, IF I
25 COULD ASK AGENT SCOWN TO COME TOGGLE ME ON NOW THAT THE

1 SYSTEM IS ON; AND IF I MAY STAND HERE, YOUR HONOR, BECAUSE
2 I DON'T THINK MY LAPTOP WILL GO THAT FAR.

3 THE COURT: YOU MAY.

4 MS. SMITH: THANK YOU.

5 WELL, LET'S JUST USE THE PAPER ONE.

6 MR. BLACKWELL: YOUR HONOR, AGAIN, I'VE HAD AN
7 OPPORTUNITY, I'VE HAD AN OPPORTUNITY TO SHOW THIS TO MY
8 CLIENT AND BRIEFLY DISCUSS IT WITH HIM, AND THERE'S
9 NOTHING IN HERE THAT WE'RE GOING TO CONTEST.

10 THE COURT: WELL, TO THE EXTENT THE AGENT NEEDS
11 TO EXPLAIN IT, I'LL LET HIM DO THAT. LET'S TRY TO MOVE
12 THROUGH IT AS QUICKLY AS WE CAN.

13 MS. SMITH: I WILL, YOUR HONOR, THANK YOU.

14 DIRECT EXAMINATION

15 BY MS. SMITH:

16 Q. COULD YOU PLEASE STATE YOUR NAME AND OCCUPATION AND
17 THE EXTENT OF YOUR FORMAL EDUCATION, AGENT SCOWN?

18 A. MY NAME IS PAUL DREW SCOWN, II. I'M A SPECIAL AGENT
19 WITH THE FBI IN JOHNSON CITY. I HAVE A BACHELOR'S AND
20 MASTER'S DEGREE IN ACCOUNTING AND I'M ALSO A CERTIFIED
21 PUBLIC ACCOUNTANT.

22 Q. AND DO YOU WORK ON ECONOMIC CRIMES AND CONDUCT
23 FINANCIAL ANALYSIS AS PART OF YOUR JOB DUTIES?

24 A. I DO.

25 Q. COULD YOU EXPLAIN TO JUDGE GREER THE SCHEME FOR THE,

1 THAT MR. SAYNE ENGAGED IN REGARDING FIRST DATA MERCHANT
2 SERVICES?

3 A. YES, MA'AM. AS IS STATED ON THE SCREEN AND AS HAS
4 BEEN STIPULATED, HE WAS CONVICTED ON NOVEMBER 17 OF 2003
5 FOR BANK FRAUD AND SENTENCED TO 5 YEARS, OR 51 MONTHS AND
6 5 YEARS ON SUPERVISED RELEASE. ON JANUARY 5 OF 2008 HE
7 WAS RELEASED, AND THEN ON DECEMBER 3 OF 2008 IS WHEN THE
8 SCHEME BEGAN, WHICH IT CONTINUED UNTIL, UP UNTIL JANUARY
9 20, 2009 WHEN HE WAS ARRESTED.

10 THE COURT: THE SCHEME BEGAN, YOU MEAN THE WIRE
11 FRAUD?

12 THE WITNESS: YES, SIR.

13 Q. OKAY. WE'LL JUST GO FORWARD A LITTLE BIT MORE. CAN
14 YOU EXPLAIN THE WIRE FRAUD SCHEME?

15 A. WELL, IT INVOLVED MR. SAYNE AND FDMS, WHICH IS FIRST
16 DATA MERCHANT SERVICES, WHICH IS A CREDIT CARD CLEARING
17 HOUSE FOR, BETWEEN MERCHANTS AND BANKS BASICALLY. MR.
18 SAYNE HAD AN ACCOUNT WITH FDMS TO RUN HIS, HIS BUSINESS;
19 AND AS SUCH, HE HAD A, WHAT I WOULD TERM A CREDIT CARD
20 MACHINE FOR THAT BUSINESS WHICH HE USED TO HELP WITH THE
21 WIRE FRAUD SCHEME. HE ALSO HAD SEVERAL DIFFERENT DEBIT
22 CARDS WHICH HE USED AS WELL IN, TO HELP WITH THE SCHEME.

23 Q. AND DID YOU FIND THE INSTRUMENTS OF THIS CRIME IN
24 HIS TRUCK ON JANUARY 20, YOU OR BRIAN O'HARE FIND THE
25 INSTRUMENT OF THIS CRIME IN HIS TRUCK PARKED IN FRONT OF

1 THE JAMES H. QUILLEN COURTHOUSE ON JANUARY 20, 2009?

2 A. WE FOUND THE INSTRUMENTS THAT HE USED FOR THIS CRIME
3 BOTH, SOME THINGS, SOME EVIDENCE OF IT IN HIS TRUCK AND
4 ALSO AT HIS RESIDENCE IN NEWPORT, TENNESSEE.

5 Q. EXPLAIN TO THE JUDGE HOW THIS SCHEME WORKED, IF YOU
6 MAY.

7 A. ALL RIGHT. WELL, IF YOU'LL GO TO THE NEXT SLIDE.
8 THIS JUST GOES ON THE TELEPHONE NUMBER THAT WAS USED.

9 Q. ALL RIGHT.

10 A. FIRST OF ALL, HE WAS RUNNING AND OPERATING A
11 BUSINESS CALLED PERFECTION AUTO DETAILING; AND AS SUCH, I
12 MENTIONED BEFORE, HE HAD AN ACCOUNT WITH FDMS FOR THAT.
13 WHAT HE WOULD DO IS -- IF YOU'D CLICK THROUGH -- HE WOULD
14 TAKE THAT ACCOUNT AND WOULD CHANGE THE VENDOR IN HIS
15 TERMINAL TO LEAD THE COMPUTER AT FDMS TO BELIEVE THAT HE
16 WAS A DIFFERENT BUSINESS, WHICH IS REPRESENTED ON THIS
17 SLIDE AS AN EMULATED VENDOR. HE WOULD THEN TAKE A DEBIT
18 CARD UNDER HIS CONTROL AND EXECUTE A TRANSACTION FOR, YOU
19 KNOW, VARYING AMOUNTS OF MONEY IN THE NAME OF THAT
20 EMULATED VENDOR USING THAT DEBIT CARD. AFTER THAT, THAT
21 WOULD CAUSE THE TRANSACTION TO BE SENT TO FDMS WHICH WOULD
22 GIVE THAT VENDOR CREDIT FOR A SALE IN THE AMOUNT THAT MR.
23 SAYNE WAS MAKING THE SALE FOR. AFTER WHICH, AS IT SAYS
24 THERE, A CREDIT IS GIVEN TO THE EMULATED VENDOR THAT MR.
25 SAYNE WAS PRETENDING TO BE; AND LATER ON, LATER IN THE

1 DAY, MR. SAYNE WOULD AGAIN EMULATE A SPECIFIC VENDOR, A
2 DIFFERENT COMPANY, AND A CREDIT WOULD BE GIVEN, USING THE
3 SAME MACHINE, WOULD BE GIVEN TO A SEPARATE DEBIT CARD
4 WHICH WAS CONTROLLED BY MR. SAYNE, A DEBIT CARD OR A STORE
5 VALUE CARD. THAT WOULD ALL BE SENT TO FDMS -- IF YOU
6 COULD CLICK IT THROUGH, PLEASE -- AND THEN IT WOULD, IT
7 WOULD BE FOR THE SAME AMOUNT AS THE PREVIOUS TRANSACTION,
8 WHICH WOULD CREATE A ZERO BALANCE BETWEEN THE TWO
9 TRANSACTIONS. SO THERE WOULD BE ONE AMOUNT FOR THE
10 PURCHASE AND THERE WOULD BE A CREDIT TO A DIFFERENT DEBIT
11 ACCOUNT FOR THE EXACT SAME AMOUNT OF MONEY.

12 Q. AND HOW DID THAT, HOW DID THAT LEAD TO BENEFIT TO
13 MR. SAYNE?

14 A. WELL, HE WOULD PUT IT ONTO CARDS THAT HE COULD THEN
15 RECEIVE THE CASH FROM ATM WITHDRAWALS AND THINGS OF THAT
16 NATURE.

17 Q. THANK YOU. HOW MUCH, HOW MANY TRANSACTIONS DID HE
18 MANIPULATE IN THE PERIOD OF TIME THAT THAT WAS UNDER
19 INVESTIGATION?

20 A. WELL, IT WAS WELL OVER 100 TRANSACTIONS IN VARYING
21 AMOUNTS. ON THE FIRST DAY THAT FDMS FIRST NOTICED THAT
22 THERE WERE SOME SUSPECT TRANSACTIONS, THOSE WERE FOR VERY
23 SMALL AMOUNTS. AS TIME PROGRESSSED, THERE WERE LARGER
24 AMOUNTS FOUND AFTER THE SCHEME WAS FOUND TO BE WORKING.

25 Q. AND HOW -- WHAT WAS THE TOTAL AMOUNT OF FUNDS THAT

1 WAS MANIPULATED BY THIS SCHEME?

2 A. WELL, IT'S LISTED HERE ON THE SLIDE, IT'S
3 \$321,313.73. NOW THAT NUMBER IS VERY LARGE AND IT
4 REPRESENTS BOTH THE PURCHASES AND THE REFUND AMOUNTS, SO
5 BOTH SIDES OF THE TRANSACTION.

6 Q. AND HOW MUCH LOSS DID FDMS ACTUALLY INCUR?

7 A. THEY INCURRED A LOSS OF \$40,661.05 FROM THE
8 SCHEME.

9 Q. WAS THAT THE TOTAL AMOUNT OF LOSS THAT WAS SUFFERED
10 BY THE MERCHANTS AS WELL IN THIS SCHEME?

11 A. IT WASN'T. THERE WERE LOSSES THAT WERE SUFFERED BY
12 THE INDIVIDUAL MERCHANTS THAT WERE, ENDED UP BEING PASSED
13 ON BY FDMS AND BY BANK OF AMERICA.

14 Q. AND HOW MANY MERCHANTS WERE AFFECTED BY THIS
15 SCHEME?

16 A. THERE WERE ABOUT 45 MERCHANTS THAT MR. SAYNE
17 EMULATED.

18 Q. AND DOES THE LOSS INCLUDE ANY OF THE COSTS WHICH
19 FDMS OR THE MERCHANTS INCURRED IN RESEARCH OR REMEDIATION
20 OF THEIR SYSTEMS?

21 A. NO, THE NUMBER DOESN'T TAKE THAT INTO ACCOUNT.

22 Q. THANK YOU. NOW, WAS THIS A SIMPLE SCHEME?

23 A. I WOULDN'T SAY SO.

24 MR. BLACKWELL: YOUR HONOR, I'M GOING TO OBJECT
25 TO THE WITNESS REACHING A CONCLUSION ONLY THE COURT CAN

1 REACH.

2 THE COURT: SUSTAINED AS TO THAT QUESTION.

3 Q. DID THIS SCHEME REQUIRE THE INTENTIONAL MANIPULATION
4 OF DATA AND COMPUTER SYSTEMS?

5 A. YES, IT DID.

6 Q. AND DID IT OCCUR BY HAPPENSTANCE OR JUST PLAIN
7 LUCK?

8 A. I DON'T BELIEVE IT DID, NO.

9 Q. DID MR. SAYNE ALSO AT THE SAME TIME OF THIS, THE
10 WIRE FRAUD, DID HE ALSO TAKE MONEY FROM HIS GRANDMOTHER?

11 A. HE DID.

12 Q. AND WHAT WAS THAT SCHEME?

13 A. MR. SAYNE HELPED A LADY NAMED ALMEDA ELLIS --

14 MR. BLACKWELL: YOUR HONOR, I'M GOING TO OBJECT
15 TO THIS. I THINK THIS IS GOING TO BE BASED ON HEARSAY. I
16 KNOW IT'S RELEVANT CONDUCT IN THE PRESENTENCE REPORT.
17 IT'S NOT CONSIDERED AS PART OF THE LOSS THAT'S CALCULATED
18 IN THE ADVISORY GUIDELINE RANGE.

19 THE COURT: AND THE OBJECTION IS THAT IT'S
20 HEARSAY OR --

21 MR. BLACKWELL: YES, SIR.

22 THE COURT: WELL, HEARSAY IS ADMISSIBLE IF IT'S
23 RELIABLE HEARSAY.

24 WHAT'S THE SOURCE OF YOUR INFORMATION AGENT
25 SCOWN?

1 THE WITNESS: WELL, I HAVE REVIEWED INTERVIEWS
2 THAT WERE DONE WITH MR. SAYNE AND ALSO WITH MS. ELLIS'S,
3 HIS GRANDMOTHER.

4 THE COURT: INTERVIEWS CONDUCTED BY FBI AGENTS?

5 THE WITNESS: YES, SIR.

6 THE COURT: ALL RIGHT. OVERRULED.

7 MR. BLACKWELL: YOUR HONOR, THE ONLY THING
8 POINTED OUT IS OBVIOUSLY HAD THE GOVERNMENT, IF THEY
9 WANTED TO HAVE HAD MS. ELLIS HERE TODAY, WE COULD HAVE
10 TOO, AND I JUST WANT THE COURT TO TAKE THAT INTO
11 CONSIDERATION.

12 THE COURT: I UNDERSTAND.

13 Q. COULD YOU CONTINUE, AGENT SCOWN.

14 A. MR. SAYNE HELPED MS. ELLIS SET UP A, WHAT IS TERMED
15 BY BOTH OF THEM, A REVERSE MORTGAGE ON HER RESIDENCE IN
16 NEWPORT, TENNESSEE. IF I RECALL CORRECTLY, IT WAS FOR AN
17 AMOUNT OF APPROXIMATELY \$122,000, WHICH MS. ELLIS USED TO
18 PAY OFF BILLS AND THINGS LIKE THAT. SHE ALSO ALLOWED MR.
19 SAYNE TO USE ABOUT \$30,000 TO BEGIN HIS BUSINESS; BUT
20 SUBSEQUENTLY ALL OF THOSE FUNDS ARE, ARE GONE NOW, AND SHE
21 DOESN'T HAVE ANY EQUITY IN HER HOME NOW.

22 THE COURT: EXCUSE ME, MS. SMITH, WHAT WAS
23 INVOLVED IN SETTING UP THIS BUSINESS? I READ IN HERE THAT
24 IT FAILED BECAUSE AN AUTO DEALER CHOSE NOT TO USE THE
25 SERVICE, BUT WHY WOULD THAT AMOUNT OF MONEY BE NEEDED TO

1 SET UP A DETAILING BUSINESS?

2 THE WITNESS: I'M NOT SURE, SIR.

3 THE COURT: WERE YOU ABLE TO CONFIRM THAT THE
4 BUSINESS EVEN EXISTED?

5 THE WITNESS: I CAN'T TESTIFY EITHER WAY.

6 THE COURT: ALL RIGHT.

7 GO AHEAD, MS. SMITH.

8 Q. HAS THE FBI SEIZED SOME OF THE ASSETS THAT MR. SAYNE
9 PURCHASED WITH THE WIRE FRAUD?

10 A. YES. WE SEIZED TWO VEHICLES.

11 Q. OKAY. WHICH VEHICLES ARE THOSE?

12 A. THE ONES LISTED HERE ON THE SCREEN, THERE'S A 2003
13 FORD EXPEDITION AND ALSO A 2000 BMW. IT'S MISPRINTED.

14 Q. AND THEN WE HAVE AN AGREED PRELIMINARY ORDER OF
15 FORFEITURE FOR A THIRD VEHICLE AS WELL?

16 A. THAT'S CORRECT.

17 Q. AND WHICH VEHICLE IS THAT?

18 A. I BELIEVE IT'S A 2004 FORD ESCAPE.

19 MS. SMITH: NOW, YOUR HONOR, I'M NOT GOING TO
20 HAVE HIM PULL EVERYTHING OUT HERE, BUT I DO WANT THE COURT
21 TO UNDERSTAND THE NATURE OF MR. SAYNE'S SCHEME, AND I'M
22 GOING TO PULL THIS CART UP HERE AND ASK HIM JUST TO
23 IDENTIFY A FEW OF THE THINGS THAT WERE FOUND IN HIS TRUCK
24 ON JANUARY 20, 2009, AND HOW THEY RELATED TO THE SCHEME.

25 THE COURT: ALL RIGHT.

1 Q. DID YOU FIND A LAPTOP COMPUTER IN THE FRONT SEAT OF
2 HIS TRUCK THAT DAY?

3 A. YES, WE DID.

4 Q. AND DID THAT COMPUTER UNDERGO A CART EXAMINATION?

5 A. YES, MA'AM. THE COMPUTER WAS FORENSICALLY EXAMINED,
6 A CART EXAMINATION, BY AN FBI COMPUTER FORENSIC
7 EXAMINER.

8 Q. AND DID YOU FIND EVIDENCE ON THAT COMPUTER WHICH
9 CORROBORATED THE FABRICATED EARNING STATEMENTS WHICH MR.
10 SAYNE SUBMITTED TO OFFICER THORNTON?

11 A. YEAH. YES, WE DID. WE FOUND, OR THE FORENSIC
12 EXAMINER FOUND EXCEL SPREADSHEETS THAT REPRESENTED, THAT
13 WERE USED FOR THOSE EARNINGS REPORTS.

14 Q. AND DID YOU FIND OTHER PIECES OF EQUIPMENT AND
15 EVIDENCE WHICH LINKED MR. SAYNE TO HIS CARD READING ZERO
16 SUM BATCH SCHEME AT THE SAME TIME?

17 A. YES, WE DID. WE FOUND --

18 Q. COULD YOU PULL ONE OF THOSE OUT AND JUST SHOW IT TO
19 THE JUDGE.

20 A. THESE REPRESENT JUST DIFFERENT CREDIT CARD MACHINES
21 FROM FDMS.

22 Q. AND IF YOU WOULD -- HOW WOULD IT WORK THERE?

23 A. I'M SORRY?

24 Q. HOW WOULD THE SCHEME WORK THERE, WHAT WOULD HE HAVE
25 TO DO WITH THAT PIECE OF EQUIPMENT?

1 A. MY UNDERSTANDING IS THAT YOU HAVE TO MAKE A PHONE
2 CALL TO FDMS AND, AND LOG IN AS A SPECIFIC VENDOR, AND
3 THEN, YOU KNOW, THROUGH A SERIES OF NORMAL TRANSACTIONS AS
4 YOU WOULD, AS YOU WOULD FIND AT A STORE.

5 Q. NOW, I KNOW YOU'VE READ ALL THE PLEADINGS IN THIS
6 CASE, BUT THE DEFENDANT HAS ALLEGED THAT THE BUSINESS WENT
7 OUT OF BUSINESS IN JULY OF 2008, JULY OR AUGUST OF 2008,
8 AND THE JUDGE JUST ASKED YOU ABOUT THAT AS WELL. WERE --
9 WAS THAT EQUIPMENT FOUND AND WAS IT BEING USED IN JANUARY
10 OF 2009 WHEN HE WAS ARRESTED?

11 A. YES, IT WAS.

12 Q. OKAY, AND DID THE SCHEME CONTINUE UNTIL HE WAS
13 ARRESTED ON JANUARY 20, 2009?

14 A. YES.

15 Q. OKAY. THANK YOU.

16 NOW, DID YOU ATTEND MR. SAYNE'S DEBRIEFING AT
17 MY OFFICE ON JANUARY 29, 2009? I BELIEVE THAT WAS THE
18 DATE, I MAY BE WRONG. JUNE, I'M SORRY, I MEANT TO SAY
19 JUNE.

20 A. YES, I WAS THERE IN JUNE.

21 Q. AND DID HE SHOW ANY WEAKNESS IN THE FDMS SYSTEM
22 PRIOR TO HIS ARREST ON JANUARY 20 OF 2009?

23 A. NO, HE DIDN'T TELL ANYONE ABOUT THE WEAKNESS.

24 Q. AND DID HE IMPLICATE, EVEN AT THE DEBRIEFING, DID HE
25 IMPLICATE ANY OTHERS IN HIS SCHEME?

1 A. NO, HE DIDN'T.

2 Q. DID HE SHOW ANY SIGNS OF REMORSE FOR HIS SCHEME?

3 A. I DON'T BELIEVE HE DID, NO.

4 MS. SMITH: THANK YOU. I HAVE NO FURTHER
5 QUESTIONS OF THE WITNESS, YOUR HONOR.

6 I WOULD LIKE TO HAVE THE POWER POINT ENTERED AS
7 AN EXHIBIT, THE PAPER COPY, IF I MAY.

8 THE COURT: ALL RIGHT. LET IT BE FILED.

9 MR. BLACKWELL, YOU MAY CROSS EXAMINE.

10 MR. BLACKWELL: WELL, THANK YOU, YOUR HONOR.

11 CROSS EXAMINATION

12 BY MR. BLACKWELL:

13 Q. LET ME START FIRST WITH ONE OF THOSE TERMINALS. YOU
14 WOULD AGREE WITH ME THAT BASED ON YOUR INVESTIGATION THAT
15 MR. SAYNE AND MS. ALLEN, HIS PARTNER AT PERFECTION,
16 LEGITIMATELY OBTAINED THAT TERMINAL FROM FIRST DATA;
17 WOULDN'T YOU?

18 A. THEY DID SET UP A CONTRACT WITH FDMS.

19 Q. AND AS PART OF THAT CONTRACT WITH FIRST DATA,
20 PERFECTION DESIGN DETAILED RECEIVED A I.D. NUMBER?

21 A. YES.

22 Q. AND IN FACT IT WAS THAT I.D. NUMBER THAT THEY WOULD
23 ENTER INTO THAT TERMINAL TO EFFECT A PARTICULAR
24 TRANSACTION; ISN'T THAT CORRECT?

25 A. THAT'S MY UNDERSTANDING OF HOW IT WOULD HAPPEN.

1 Q. AND IF FACT WHAT MR. SAYNE DID VERY SIMPLY WAS AFTER
2 THE BUSINESS WENT OUT, HE WOULD ENTER A NUMBER, EITHER ONE
3 NUMBER ABOVE OR ONE NUMBER BELOW, TO SEE IF THAT WAS A
4 VALID NUMBER FOR ANOTHER MERCHANT; WOULDN'T HE?

5 A. THAT'S WHAT HE REPORTED TO US IN JUNE, YES, SIR.

6 Q. AND BASED ON YOUR INVESTIGATION, DID YOU CHECK TO
7 DETERMINE WHETHER HE WAS BEING ACCURATE WHEN HE TOLD YOU
8 THAT?

9 A. I DID SPEAK WITH FDMS, AND THEY BELIEVED THAT TO BE
10 A PLAUSIBLE EXPLANATION.

11 Q. AND THEN REALLY THE REST OF THE SCHEME WAS A TWO-
12 STEP PROCESS LIKE YOU JUST TESTIFIED INVOLVING A DEBIT AND
13 A CREDIT THAT ULTIMATELY WENT TO MR. SAYNE'S BENEFIT?

14 A. THERE WOULD BE A DEBIT OFF OF ONE CARD AND THEN --
15 BY DEBIT I MEAN PAYING FOR SOMETHING WITH ONE CARD, AND
16 THEN RECEIVING A REFUND ON A SEPARATE CARD, YES, SIR.

17 Q. AND THERE WOULD BE THAT DEBIT CREDIT FOR EACH
18 TRANSACTION INVOLVING EACH INDIVIDUAL MERCHANT?

19 A. YES, WITH EQUAL AMOUNTS OF MONEY.

20 Q. NOW, YOU SAID THAT WHAT MR. SAYNE DID, AND I BELIEVE
21 THIS IS CONTAINED ON THE DIAGRAM, IS THAT A STORAGE DEVICE
22 OR THE MONEY THAT HE GOT, THE FORTY SOME THOUSAND DOLLARS
23 WENT INTO A DEBIT CARD OR A VALUE ADDED CARD?

24 A. THAT'S CORRECT.

25 Q. NOW, WHAT I DIDN'T SEE ON HERE, OR I DON'T BELIEVE

1 YOU TESTIFIED ABOUT, THOSE CARDS WERE IN MR. SAYNE'S NAME;
2 WEREN'T THEY?

3 A. WHICH ONES, THE ONES THAT HE WOULD RECEIVE THE FUNDS
4 ONTO?

5 Q. YES.

6 A. YES.

7 Q. AND THEY WERE EITHER IN HIS NAME OR THEY WERE IN THE
8 NAME OF THE BUSINESS; WEREN'T THEY?

9 A. THAT'S CORRECT.

10 Q. SO YOU WOULD AGREE WITH ME THAT THERE WAS NO ATTEMPT
11 ON HIS PART TO CONCEAL HIS IDENTITY BY ACCUMULATING THAT
12 MONEY IN THOSE CARDS?

13 A. WELL, I WOULD CERTAINLY SAY THAT THERE COULD HAVE
14 BEEN MORE THINGS HE COULD HAVE DONE TO CONCEAL HIS
15 IDENTITY, YES, SIR.

16 Q. BUT IF YOU PUT SOMETHING IN YOUR OWN NAME, IF YOU
17 GET CAUGHT, THAT'S PRETTY GOOD EVIDENCE THAT YOU DID WHAT
18 YOU DID; ISN'T IT?

19 A. IT IS GOOD EVIDENCE, YES, SIR.

20 Q. NOW, YOU SAID YOU HAD AN OPPORTUNITY TO READ THE
21 PLEADINGS IN THE CASE. DID YOU ALSO HAVE A CHANCE TO READ
22 THE PRESENTENCE REPORT?

23 A. I CAN'T SAY I READ EVERY SINGLE WORD, BUT, YES, I'VE
24 SEEN A COPY OF IT.

25 Q. LET ME BACK UP FROM THAT. YOU HAD AN OPPORTUNITY TO

1 PARTICIPATE WITH MS. SMITH IN DRAFTING THE AGREED FACTUAL
2 BASIS OR THE FACTUAL BASIS THAT THE GOVERNMENT USED TO
3 SUPPORT MR. SAYNE'S GUILTY PLEA?

4 A. YES, SIR.

5 Q. AND YOU WOULD AGREE THAT IN THAT FACTUAL BASIS THE
6 SCHEME WAS DESCRIBED SOMEWHAT LIKE YOU'VE DESCRIBED IT IN
7 COURT TODAY?

8 A. YES, SOMEWHAT.

9 Q. OKAY, AND YOU'RE AWARE IN READING THE PRESENTENCE
10 REPORT THAT THE PROBATION OFFICE, HAVING READ THAT, MADE A
11 DECISION NOT TO APPLY THE SOPHISTICATED MEANS TWO LEVEL
12 ENHANCEMENT?

13 MS. SMITH: I OBJECT, YOUR HONOR. I DON'T KNOW
14 THAT THIS, THIS WITNESS IS QUALIFIED TO TESTIFY ON THAT.

15 THE COURT: WELL, IT GOES WITHOUT SAYING THAT
16 THE PROBATION OFFICER DID NOT APPLY THE ENHANCEMENT.
17 THAT'S CLEARLY ESTABLISHED.

18 MR. BLACKWELL: THANK YOU, YOUR HONOR. THAT'S
19 MY POINT.

20 Q. LET ME ASK YOU A COUPLE OF MORE QUESTIONS. YOU WERE
21 ASKED ABOUT THE MEETINGS THAT LED UP TO OUR MEETING ON
22 JUNE 29, YOU ENTERED THIS CASE AT WHAT POINT?

23 A. I'M GOING TO SAY PROBABLY AROUND THE MIDDLE OF MAY
24 2009.

25 Q. OKAY, AND BY THEN THE CASE HAD BEEN ACTIVE, HAD IT,

1 FOR A PERIOD OF TIME?

2 A. YES, SIR.

3 Q. AND, IN FACT, THE CASE AGENT BEFORE YOU WAS BRIAN
4 O'HARE; IS THAT RIGHT?

5 A. THAT'S RIGHT.

6 Q. AND MR. O'HARE HAD BEEN INVOLVED UP TO AN EXTENT
7 BEFORE HE LEFT ON A DETAIL?

8 A. THAT'S CORRECT.

9 Q. WERE YOU AWARE IN YOUR REVIEW OF THE FILE THAT THERE
10 WAS A MEETING BETWEEN MR. O'HARE AND ME AND MR. SAYNE ON
11 MARCH 31 OF 2009?

12 A. I WAS. I BELIEVE IT WAS AT THE WASHINGTON COUNTY
13 DETENTION FACILITY.

14 Q. RIGHT. AND WERE YOU AWARE THAT THAT MEETING LASTED
15 OVER TWO HOURS?

16 A. I WASN'T AWARE OF THE LENGTH OF THE MEETING, SIR.

17 Q. AND THAT DURING THAT MEETING MR. SAYNE ON SEVERAL
18 OCCASIONS EXPRESSED REMORSE FOR WHAT HE HAD DONE AND TOLD
19 AGENT O'HARE THAT HE WANTED HELP?

20 A. I'D HAVE TO REVIEW AGENT O'HARE'S REPORT TO BE SURE;
21 THAT VERY WELL COULD HAVE HAPPENED.

22 Q. WELL, AND THAT WAS GOING TO BE MY NEXT QUESTION,
23 HAVE YOU HAD AN OPPORTUNITY TO REVIEW THAT REPORT?

24 A. I HAVE.

25 Q. DID THE REPORT CONTAIN A LOT OF DETAIL ABOUT WHAT

1 MR. SAYNE TALKED ABOUT?

2 A. IT DID HAVE DETAIL, YES, SIR.

3 Q. AND, IN FACT, DID IT REFLECT THAT MR. SAYNE WAS THE
4 ONE THAT REQUESTED AND ASKED FOR THAT MEETING WITH AGENT
5 O'HARE TO EXPLAIN TO HIM THE WHOLE BACKGROUND OF WHAT
6 HAPPENED AND THE CRIMES HE COMMITTED?

7 A. I DO RECALL THAT IN JUNE, IF I RECALL -- SPECIAL
8 AGENT O'HARE WAS STILL THE CASE AGENT IN JUNE WHEN I WAS A
9 PART OF THE DEBRIEFING AT THE UNITED STATES ATTORNEY'S
10 OFFICE, AND I DO RECALL HIM SAYING THAT MR. SAYNE WANTED
11 TO MEET WITH US THEN. I DON'T RECALL ABOUT THE MARCH
12 MEETING, BUT I WOULD ASSUME THAT MR. SAYNE WANTED TO MEET
13 WITH THE FBI AT THAT TIME AS WELL.

14 Q. YOU'VE BEEN AN FBI AGENT HOW LONG?

15 A. SINCE DECEMBER OF 2008.

16 Q. WOULD YOU AGREE WITH ME THAT IT'S EXTRAORDINARY FOR
17 A DEFENDANT TO INSIST ON MEETING WITH THE FBI IN ORDER TO
18 EXPLAIN THE DETAILS OF WHAT THAT DEFENDANT DID TO GIVE THE
19 VICTIM A BETTER UNDERSTANDING OF SECURITY PROBLEMS THAT
20 VICTIM MIGHT HAVE?

21 A. I WOULD SAY THAT'S NOT EXTRAORDINARY, SIR.

22 Q. I KNOW YOU'VE ONLY BEEN AN AGENT A COUPLE OF YEARS,
23 BUT HOW OFTEN HAS THAT HAPPENED IN THE TWO YEARS?

24 A. IN MY CASES THAT'S THE ONLY TIME IT HAS HAPPENED;
25 BUT SPEAKING WITH AGENTS IN OUR OFFICE, PEOPLE OFTEN DO

1 WANT TO DEBRIEF WITH THE FBI TO HELP THEIR CAUSE, IF YOU
2 WILL.

3 Q. WELL, BUT MR. SAYNE HAD ALREADY AGREED TO PLEAD
4 GUILTY AND WAS ADMITTING HIS INVOLVEMENT AND DETAILED HIS
5 PARTICIPATION IN THE CRIMES; DIDN'T HE?

6 A. HE DID ADMIT THAT HE WAS INVOLVED IN THOSE CRIMES,
7 YES, SIR.

8 Q. AND WOULD YOU AGREE WITH ME AFTER READING THE 302,
9 OR THE NOTES THAT AGENT O'HARE HAD, ON MARCH 31 THAT HE
10 DIDN'T FIND ANYTHING THAT MR. SAYNE SAID TO HAVE BEEN
11 UNTRUTHFUL?

12 A. IF I RECALL CORRECTLY, THE ONLY THING THAT AGENT
13 O'HARE CALLED INTO QUESTION WAS MR. SAYNE'S, MR. SAYNE
14 BEING THE ONLY PERSON INVOLVED IN THIS SCHEME, BUT THERE
15 CERTAINLY WAS A LOT OF TRUTHFUL INFORMATION THAT MR. SAYNE
16 PROVIDED.

17 Q. AND NOBODY ELSE HAS BEEN CHARGED IN THIS SCHEME;
18 HAVE THEY?

19 A. NO, SIR.

20 Q. DID AGENT O'HARE EVER INDICATE TO YOU WHO HE THOUGHT
21 MIGHT BE INVOLVED IN THE SCHEME BESIDES MR. SAYNE?

22 A. HE INDICATED TO ME THAT HE THOUGHT IT MAY HAVE BEEN
23 SOMEONE THAT HAD INSIDE INFORMATION INTO FDMS, BUT HE
24 DIDN'T SPECIFICALLY GIVE ME A NAME, NO, SIR.

25 Q. NOW, DID AGENT O'HARE INDICATE TO YOU THAT MR. SAYNE

1 HAD BEEN VERY HELPFUL IN THAT INTERVIEW ON MARCH 31?

2 A. I DON'T RECALL AGENT O'HARE SAYING WHETHER THE
3 INTERVIEW WAS HELPFUL OR NOT.

4 Q. NOW, YOU WERE PRESENT --

5 A. THERE WAS HELPFUL INFORMATION IN THE 302 THOUGH,
6 YES, SIR.

7 Q. ALL RIGHT, AND ON JUNE 29 OF 2009, YOU WERE PRESENT
8 DURING THAT MEETING?

9 A. YES, I WAS.

10 Q. AND THAT WAS A MEETING IN THE U.S. ATTORNEY'S OFFICE
11 HERE IN GREENEVILLE?

12 A. YES, SIR.

13 Q. AND IT INVOLVED YOU AND MYSELF AND MR. SAYNE,
14 MS. SMITH, WAS AGENT O'HARE THERE THEN?

15 A. YES, HE WAS.

16 Q. AND THAT MEETING INVOLVED THE AGENTS AND MS. SMITH
17 ASKING MR. SAYNE A LOT OF QUESTIONS; ISN'T THAT CORRECT?

18 A. YES, SIR.

19 Q. AND IN YOUR OPINION WAS MR. SAYNE TRUTHFUL IN THE
20 INFORMATION HE PROVIDED DURING THAT MEETING?

21 A. I CAN'T BE SURE ABOUT ALL THE INFORMATION HE
22 PROVIDED, BUT I BELIEVE THAT THE BULK OF THE INFORMATION,
23 IF NOT ALL THE INFORMATION, HE PROVIDED WAS TRUTHFUL.

24 Q. WELL, DO YOU RECALL ANYTHING IN PARTICULAR THAT YOU
25 BELIEVED THEN OR NOW WAS NOT TRUTHFUL?

1 A. AS I MENTIONED BEFORE, SPECIAL AGENT O'HARE AND
2 MYSELF HAD QUESTIONS AS TO IF SOMEONE ELSE WAS INVOLVED IN
3 THE SCHEME.

4 Q. AND, IN FACT, MR. SAYNE EXPLAINED TO YOU HOW THE
5 SCHEME WORKED AND ASKED, AS I DID, THAT YOU ALL NOTIFY
6 FIRST DATA OF THE INFORMATION HE HAD PROVIDED; ISN'T THAT
7 CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND WOULD YOU AGREE WITH ME THAT DURING THE COURSE
10 OF THAT MEETING THAT MR. SAYNE IN SOME DETAIL TALKED ABOUT
11 INFORMATION HE HAD FOUND THAT HE THOUGHT FIRST DATA SHOULD
12 KNOW ABOUT BECAUSE IT CREATED A SECURITY ISSUE FOR HIM?

13 A. ARE YOU TALKING ABOUT THE INFORMATION HE FOUND ON
14 THE INTERNET?

15 Q. YES, SIR.

16 A. THAT WAS ACTUALLY IN THE MARCH MEETING; BUT, YES,
17 THAT WAS RECORDED INTO AGENT O'HARE'S REPORT.

18 Q. AND IN JUNE WE WENT OVER THAT AGAIN IN MORE DETAIL;
19 DIDN'T WE?

20 A. WE DID GO OVER AGAIN THE METHODOLOGY MR. SAYNE WOULD
21 USE TO PERFORM THE TRANSACTIONS, YES, SIR.

22 Q. WELL, WHAT I WANT YOU TO DO IS EXPLAIN TO THE COURT
23 WHAT INFORMATION MR. SAYNE REPORTED TO YOU AND TO AGENT
24 O'HARE THAT HE HAD DISCOVERED ON THE INTERNET THAT HE
25 WANTED TRANSMITTED TO FIRST DATA?

1 A. I RECALL FROM THE REPORT, I WASN'T THERE IN MARCH
2 WHEN WE TALKED, WHEN MR. SAYNE TALKED ABOUT FINDING THE
3 INFORMATION ON THE INTERNET, HOWEVER, FROM THE REPORT IT
4 MENTIONED THAT IT WAS INFORMATION THAT HE HAD GOOGLED, HAD
5 FOUND USING GOOGLE.COM THAT HE BELIEVED TO BE PROPRIETARY
6 TO FDMS THAT SHOWED HOW TO SET UP A TERMINAL AND I
7 BELIEVE, IF I REMEMBER CORRECTLY FROM THE REPORT,
8 CONTAINED A PASSWORD TO HELP WITH SETTING UP THE TERMINAL.

9 Q. OKAY. WELL, LET ME ASK YOU THIS, WOULD YOU AGREE
10 WITH ME THAT WHAT MR. SAYNE SAID WAS THAT HE HAD FOUND
11 THROUGH, HAD FOUND PERSONAL CREDIT CARD INFORMATION COULD
12 BE OBTAINED FROM THE USE OF A FIRST DATA TERMINAL AND A
13 PASSWORD BASED ON INFORMATION HE HAD DISCOVERED DURING
14 INTERNET SEARCHES?

15 A. I'M SORRY, COULD YOU REPEAT THE QUESTION.

16 Q. ALL RIGHT. DID MR. SAYNE INDICATE THAT HE FOUND
17 PERSONAL CREDIT CARD INFORMATION ON PEOPLE COULD BE
18 OBTAINED USING A FIRST DATA TERMINAL AND A PASSWORD BASED
19 ON SEARCHES HE MADE ON THE INTERNET?

20 A. IF I RECALL CORRECTLY, THE INFORMATION HE COULD FIND
21 WAS INFORMATION ON PARTICULAR VENDORS. I DON'T RECALL
22 ABOUT INDIVIDUAL PEOPLE'S CREDIT CARD INFORMATION; BUT I
23 DO REMEMBER, AND THAT'S THE CRUX OF WHAT HAPPENED AS WELL,
24 IS DIFFERENT VENDORS THAT WERE EMULATED.

25 Q. WELL, OBVIOUSLY IF SOMEONE CAN GET ACCESS TO VENDOR

1 INFORMATION, YOU CAN ACCESS CUSTOMER INFORMATION AS IT
2 RELATES TO THOSE VENDORS; CAN'T YOU?

3 A. THAT'S CERTAINLY A POSSIBILITY, I'M NOT SURE.

4 Q. AND MR. SAYNE BOTH IN MARCH AND IN JUNE EXPRESSED
5 HIS DESIRE THAT THIS INFORMATION BE PROVIDED TO FIRST DATA
6 SO THEY COULD TAKE STEPS TO MAKE SURE THAT THAT
7 INFORMATION WAS NOT STOLEN AND USED; DIDN'T HE?

8 A. I BELIEVE THAT'S TRUE.

9 Q. AND YOU WOULD AGREE THAT THE FBI AND THE U.S.
10 ATTORNEY'S OFFICE AGREED AT THE TIME THAT THAT WAS
11 VALUABLE INFORMATION AND THAT YOU WOULD PASS IT ON TO
12 FIRST DATA?

13 A. WELL, WE DID AGREE TO PASS IT ON TO FDMS BECAUSE IT
14 WAS, I AGREE IT WAS IMPORTANT INFORMATION TO MAKE SURE
15 THAT THIS KIND OF SCHEME DIDN'T HAPPEN AGAIN. FDMS
16 CONTACTED ME SEVERAL TIMES. THEY WERE VERY INTERESTED IN
17 UNDERSTANDING HOW THIS SCHEME WORKED. THEY HADN'T, THEY
18 HAD NOT SEEN THIS SCHEME BEFORE. THIS WAS SOMETHING
19 COMPLETELY NEW TO THEM; AND SO, YES, SIR, THEY WERE VERY
20 INTERESTED TO KNOW EXACTLY HOW THE TRANSACTIONS WOULD TAKE
21 PLACE BECAUSE THEY WANTED TO BE ABLE TO PUT CONTROLS IN
22 PLACE TO MAKE SURE IT DIDN'T HAPPEN AGAIN BECAUSE, LIKE I
23 SAID, THEY HAD NEVER SEEN THIS KIND OF A SCHEME BEFORE.

24 Q. AND BASED ON INFORMATION THAT MR. SAYNE PROVIDED,
25 DID FIRST DATA TAKE STEPS TO CHANGE THEIR SECURITY

1 PROCEDURES?

2 A. I'M NOT SURE WHAT THEIR INTERNAL CONTROLS WERE OR
3 ARE AT THIS TIME. I DID PASS THE INFORMATION ON TO THEM,
4 AND I WOULD ASSUME THAT THEY HAVE TAKEN STEPS TO PROTECT
5 THEMSELVES.

6 Q. NOW, YOU SAID EARLIER THAT ON MARCH 31 AND JUNE 29
7 OF LAST YEAR THAT SOMEONE, EITHER YOU OR AGENT O'HARE,
8 PREPARED A 302 OF THE INTERVIEWS WITH MR. SAYNE?

9 A. YES.

10 Q. DO YOU HAVE THOSE INTERVIEWS WITH YOU TODAY HERE?

11 A. I DO.

12 MR. BLACKWELL: YOUR HONOR, I'D SIMPLY LIKE
13 THOSE TO BE ADMITTED AS EXHIBITS FOR THE COURT'S
14 CONSIDERATION.

15 MS. SMITH: YOUR HONOR, THAT WAS PROVIDED AS
16 DISCOVERY. I DON'T KNOW THAT HE -- I MEAN, I CERTAINLY
17 DIDN'T INTEND TO PUT THOSE IN TODAY.

18 THE COURT: WELL, I UNDERSTAND THE POINT
19 MR. BLACKWELL IS MAKING. THEY CAN BE FILED, BUT SOMEBODY
20 WILL HAVE TO PROVIDE THEM TO THE CLERK.

21 MR. BLACKWELL: THAT'S FINE. THAT'S ALL I
22 HAVE, YOUR HONOR. THANK YOU.

23 THE COURT: ANYTHING ELSE, MS. SMITH?

24 MS. SMITH: I DO, YOUR HONOR.

25 REDIRECT EXAMINATION

1 BY MS. SMITH:

2 Q. DID MR. SAYNE GIVE ANY INFORMATION TO FDMS PRIOR TO
3 HIS BEING ARRESTED IN FRONT OF THE BUILDING ON JANUARY 20,
4 2009?

5 A. NO, HE DIDN'T.

6 Q. AND DID HE EVER GIVE ANY TIPS OR HOT LINE CALLS OR
7 ANYTHING TO CONTROL THE LOSSES THAT FDMS INCURRED?

8 A. NO, HE DIDN'T.

9 Q. AND IN FACT AT THE TIME HE GAVE THIS VALUABLE
10 INFORMATION, HE HAD BEEN ADVISED HE WAS GOING TO BE
11 CHARGED WITH WIRE FRAUD AT THE VERY LEAST; WASN'T HE?

12 A. THAT'S CORRECT.

13 Q. AND I THINK SOME OF THE QUESTIONS THAT MR. BLACKWELL
14 ASKED YOU, THE INTENT WAS THAT MR. SAYNE SIMPLY TOOK
15 ADVANTAGE OF A GLITCH IN THE FDMS SYSTEM. WERE THESE
16 LOSSES CAUSED BY A GLITCH IN THE SYSTEM OR WERE THEY
17 CAUSED BY MR. SAYNE'S INTENTIONAL MANIPULATION OF THE FDMS
18 SYSTEM?

19 A. HE CERTAINLY DID INTENTIONALLY MANIPULATE THE
20 SYSTEM, AS WAS EVIDENCED BY THE COMPLEXITY OF THE
21 TRANSACTIONS AND THE MULTIPLE TRANSACTIONS, AS WELL AS HIS
22 OWN STATEMENTS TO THE FBI ON BOTH OF THE OCCASIONS THAT
23 MR. BLACKWELL NOTED.

24 MS. SMITH: THANK YOU. I HAVE NO FURTHER
25 QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING ELSE, MR. BLACKWELL?

2 MR. BLACKWELL: NO, SIR.

3 || EXAMINATION

4 || BY THE COURT:

5 Q. AGENT SCOWN, LET ME ASK YOU A QUESTION. I BELIEVE I
6 UNDERSTOOD YOU TO SAY THAT FDMS HAD NEVER SEEN THIS SCHEME
7 BEFORE; IS THAT CORRECT?

8 A. THAT'S WHAT THEY REPORTED TO ME, YES, SIR.

9 Q. GIVEN THE NAME THAT'S ATTACHED TO IT IN THE
10 PRESENTENCE REPORT, ZERO SUM BATCH FRAUD SCHEME,
11 APPARENTLY SOMEBODY HAS SEEN IT BEFORE. THIS DIDN'T
12 ORIGINATE WITH MR. SAYNE, I TAKE IT?

13 A. MY UNDERSTANDING IS THAT IS A TERM THAT WAS COME UP
14 WITH FDMS TO EXPLAIN HOW THE FRAUD SCHEME WORKED; AND THE
15 REASON THAT THEY TERMED IT AS ZERO SUM BATCH SCHEME IS
16 THAT WHEN MR. SAYNE WOULD MAKE A PURCHASE ON ONE CARD IN
17 THE NAME OF AN EMULATED VENDOR, THEN WITHIN A 24 HOUR
18 PERIOD, SO BEFORE THE BATCH WAS CLOSED OUT, MR. SAYNE
19 WOULD MAKE THE REFUND TO THE SEPARATE CARD FOR THE EXACT
20 SAME AMOUNT SO THAT IT WOULD EQUAL ZERO.

21 Q. AND THAT, OF COURSE, IS THE KEY TO BEING, TO NOT
22 BEING DETECTED BECAUSE THERE HAD TO BE A CORRESPONDING
23 CREDIT FOR THAT DEBIT WITHIN THE 24 HOUR PERIOD, OTHERWISE
24 SOMEBODY WOULD DISCOVER WHAT WAS GOING ON?

A. THAT'S RIGHT. THAT'S THE WHOLE IDEA BEHIND IT IS TO

1 MAKE THINGS ZERO OUT IN THE ATTEMPT TO STAY UNDER THE
2 RADAR.

3 Q. OKAY. THE -- WHERE IS FDMS LOCATED?

4 A. I BELIEVE THE HEADQUARTERS IS IN CORAL SPRINGS,
5 FLORIDA.

6 Q. AND ACCORDING TO THE PRESENTENCE REPORT, THESE
7 TRANSACTIONS OCCURRED OVER ABOUT A SIX WEEK OR SO PERIOD;
8 IS THAT RIGHT?

9 A. THAT'S RIGHT. THEY BEGAN IN DECEMBER OF 2008 AND
10 ENDED IN JANUARY OF 2009.

11 Q. AND THERE WERE ABOUT 45 VENDORS OR MERCHANTS WHO
12 WERE EMULATED DURING THAT PERIOD OF TIME?

13 A. THAT'S CORRECT.

14 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE
15 AGENT?

16 OKAY. THANK YOU VERY MUCH. YOU MAY STEP DOWN.

17 ALL RIGHT, MS. SMITH, CALL YOUR NEXT WITNESS.

18 MS. SMITH: PROBATION OFFICER DAN THORNTON.

19 DAN THORNTON, GOVERNMENT'S WITNESS, SWORN

20 DIRECT EXAMINATION

21 BY MS. SMITH:

22 Q. WOULD YOU PLEASE STATE YOUR NAME AND OCCUPATION.

23 A. DAN THORNTON, UNITED STATES PROBATION OFFICER
24 ASSIGNED HERE IN THE GREENEVILLE DIVISION.

25 Q. WELL, I'M SURE IT'S REDUNDANT. WOULD YOU GIVE THE

1 COURT AN ABBREVIATED DESCRIPTION OF YOUR JOB DUTIES,
2 MR. THORNTON.

3 MR. BLACKWELL: YOUR HONOR, I WILL AGREE AND
4 STIPULATE THAT MR. THORNTON IS MORE THAN QUALIFIED TO
5 TESTIFY AS A PROBATION OFFICER.

6 THE COURT: AND I CERTAINLY KNOW HIS BACKGROUND
7 AND KNOW THAT IT'S IMPORTANT TO PUT THAT IN THE RECORD.

8 MS. SMITH: THANK YOU.

9 Q. MR. -- ARE YOU FAMILIAR WITH MR. ROBERT SAYNE?

10 A. YES, MA'AM.

11 Q. AND HOW ARE YOU FAMILIAR WITH HIM AND HOW LONG HAVE
12 YOU KNOWN HIM?

13 A. I WAS ASSIGNED TO SUPERVISE MR. SAYNE ON HIS TERM OF
14 SUPERVISION UPON HIS RELEASE FROM THE BUREAU OF PRISONS.
15 HIS SUPERVISION COMMENCED ON JANUARY 5 OF 2008.

16 MS. SMITH: ALL RIGHT, AND I'M GOING TO ASK THE
17 COURT TO ADMIT THIS EXHIBIT, I ACTUALLY HAVE TWO COPIES,
18 ONE FOR THE WITNESS AND ONE FOR THE COURT.

19 Q. IF YOU COULD IDENTIFY THESE, MR. THORNTON. IT MIGHT
20 SAVE A LITTLE TIME AS WELL. CAN YOU RECOGNIZE THOSE,
21 MR. THORNTON?

22 A. YES, MA'AM. THE MAJORITY OF THE PACKET CONTAINS
23 MONTHLY SUPERVISION REPORTS, AS WELL AS PROOF OF EARNINGS,
24 AND IT APPEARS ALSO, I SAW ONE AND HERE'S ANOTHER PERSONAL
25 FINANCIAL STATEMENT SUBMITTED BY MR. SAYNE.

1 Q. NOW, WHAT IS THE PROCESS WITH MR. SAYNE WHEN HE CAME
2 UNDER YOUR SUPERVISION UPON HIS RELEASE FROM FEDERAL
3 PRISON?

4 A. BEAR WITH ME JUST A MOMENT.

5 Q. YES, SIR.

6 A. ON JANUARY 8, 2008, WHICH WAS THREE DAYS AFTER HIS
7 RELEASE, MR. SAYNE REPORTED TO OUR OFFICE HERE IN
8 GREENEVILLE, AND HIS CONDITIONS OF SUPERVISION WERE READ
9 TO HIM AND EXPLAINED. THE REQUIREMENT OF THE MONTHLY
10 REPORTING FORMS WERE STRESSED, AS WELL AS THE SIGNIFICANCE
11 OF THE PROOF OF EARNINGS, AND JUST GENERAL QUESTIONS THAT
12 HE MAY HAVE HAD AT THAT TIME.

13 Q. DID YOU EXPLAIN TO HIM ABOUT THE MONTHLY REPORTS HE
14 WAS REQUIRED TO SUBMIT TO YOU?

15 A. YES, MA'AM. THAT IS A STANDARD CONDITION OF
16 SUPERVISION FOR EVERY OFFENDER, WHETHER IT'S PROBATION OR
17 A SUPERVISED RELEASE CASE, THAT THEY ARE REQUIRED TO
18 SUBMIT A MONTHLY SUPERVISION REPORTING FORM EVERY MONTH.

19 Q. AND DID YOU EXPLAIN TO HIM WHAT IT MEANT TO SUBMIT
20 THINGS UNDER PENALTIES OF PERJURY TO YOU?

21 A. YES, MA'AM. IF YOU HAPPEN TO LOOK ON THE SECOND
22 PAGE OF EACH FORM OF THE MONTHLY REPORTING FORM, ON THE
23 LEFT COLUMN TOWARDS THE BOTTOM THERE'S A WARNING THAT ANY
24 FALSE STATEMENT MAY RESULT IN REVOCATION OF PROBATION,
25 SUPERVISED RELEASE OR PAROLE AND AN ADDITIONAL 5 YEARS IN

1 PRISON OR A \$25,000 FINE OR BOTH UNDER THAT 18 U.S.C. 1001
2 SECTION.

3 MS. SMITH: THIS MIGHT BE A GOOD TIME, YOUR
4 HONOR, TO ASK THE CLERK TO PUT THE EXHIBIT ON THE
5 PRESENTER, AND I WAS GOING TO GO THROUGH THIS EXHIBIT,
6 JUST A FEW PAGES IF I COULD. THANK YOU.

7 Q. SO YOU'RE TALKING ABOUT THAT PART RIGHT HERE, THE
8 WARNING PART RIGHT THERE?

9 A. YES, MA'AM. THERE ON THE LEFT SIDE.

10 Q. THANK YOU. AND WHAT IS THE PURPOSE OF THIS MONTHLY
11 REPORT, OR WHAT ARE THE PURPOSES, I GUESS, THAT I SHOULD
12 SAY THERE?

13 A. WELL, THERE'S SEVERAL. THERE'S FOUR OR FIVE PARTS
14 TO THE MONTHLY REPORTING FORMS. SPECIFICALLY OFFENDERS
15 ARE REQUIRED TO PROVIDE THEIR CURRENT ADDRESS EACH MONTH,
16 WHO IS LIVING WITH THEM, WHETHER THEY HAVE MOVED DURING
17 THE PREVIOUS MONTH OF THEIR SUPERVISION. THE NEXT SECTION
18 ADDRESSES EMPLOYMENT, EARNINGS, WHO THEIR SUPERVISORS ARE,
19 HOURS OF WORK THAT THEY HAVE, THEIR TYPICAL WORK HOURS.
20 PART D, EXCUSE ME, C IS THEY'RE REQUIRED TO PROVIDE
21 VEHICLE INFORMATION. PART D IS A BRIEF MONTHLY FINANCIAL
22 STATEMENT. IT JUST INDICATES HOW THE OFFENDERS UNDER
23 SUPERVISION ARE SPENDING THEIR MONEY, ASKS IF THEY HAVE
24 ANY BANK ACCOUNTS, SAVINGS OR CHECKING; AND THEN PART E ON
25 PAGE 2 ASKS ABOUT ANY CONTACT WITH LAW ENFORCEMENT, DO

1 THEY HAVE ANY CONTACT WITH ANYONE HAVING A CRIMINAL
2 RECORD, DID THEY POSSESS A FIREARM DURING THE PREVIOUS
3 MONTH ON SUPERVISION, DID THEY USE ANY ILLEGAL DRUGS,
4 TRAVEL OUT OF THE DISTRICT.

5 Q. DOES ALL OF THIS TIE IN ONE WAY OR ANOTHER INTO THE
6 JUDGMENT AND COMMITMENT ORDER?

7 A. YES, MA'AM.

8 Q. OR TO THE, TO THE DEFENDANT'S REHABILITATION?

9 A. WELL, IT PROVIDES THE PROBATION OFFICE -- IT'S A
10 TOOL THAT WE USE TO MONITOR INDIVIDUALS ON SUPERVISION, IN
11 PARTICULAR WITH MR. SAYNE HAVING A FINANCIAL OBLIGATION
12 PAYABLE TO THE COURT.

13 Q. SO YOU USE THIS INFORMATION TO DETERMINE IF HE'S
14 PAYING ENOUGH TOWARDS HIS RESTITUTION DEBT AS HE SHOULD
15 BE?

16 A. THIS IS A BRIEF INDICATOR. THE ACTUAL PERSONAL
17 FINANCIAL STATEMENT, WHICH I'M SURE YOU'LL GET TO IN A
18 WHILE, GOES INTO MORE DETAIL PROMPTING OFFENDERS TO
19 PROVIDE BASICALLY A SNAPSHOT OF HOW MUCH MONEY THEY HAVE
20 AVAILABLE TO PAY TOWARDS THEIR FINANCIAL OBLIGATION.

21 Q. NOW, DID YOU ASK MR. SAYNE, OR REQUIRE MR. SAYNE
22 RATHER, TO SUBMIT TO DRUG SCREENS WHILE HE WAS UNDER YOUR
23 SUPERVISION?

24 A. YES, MA'AM.

25 Q. HOW LONG DID THAT LAST AND WHAT WAS THE RESULT OF

1 THAT?

2 A. MR. SAYNE WAS PLACED ON OFFICE CODE-A-PHONE ON
3 JANUARY 8, AND COINCIDENTALLY HE SUBMITTED A URINE DRUG
4 SCREEN ON JANUARY 8, 2008 WITH NEGATIVE RESULTS; AND HE
5 WAS ON THE CODE-A-PHONE FOR A LITTLE OVER SIX MONTHS. ALL
6 OF HIS SCREENS SUBMITTED RESULTED WITH NEGATIVE RESULTS.

7 Q. SO THROUGH JULY 8, 2008, YOU HAD NO INDICATION OF
8 ANY SUBSTANCE ABUSE OR USE BY MR. SAYNE?

9 A. JULY, I'M SORRY, JULY 17, 2008 WAS HIS LAST OBTAINED
10 DRUG SCREEN.

11 Q. AND DID YOU TERMINATE THE DRUG SCREENS AT THAT
12 TIME?

13 A. I DID.

14 Q. DID HE EVER REPORT TO YOU THAT HE WAS USING OR
15 ABUSING ILLEGAL SUBSTANCES?

16 A. NO, MA'AM.

17 Q. IF HE HAD, WHAT WOULD HAVE BEEN YOUR RESPONSE?

18 A. HAD HE DONE THAT, I WOULD HAVE REFERRED HIM FOR A
19 SUBSTANCE ABUSE ASSESSMENT, LET THOSE INDIVIDUALS AT THE
20 TREATMENT FACILITY MAKE THAT DETERMINATION WHETHER
21 TREATMENT WAS NECESSARY, AND AT THAT TIME CALL HIM BACK IN
22 AND WE WOULD DISCUSS THE ASSESSMENT AND REFER HIM FOR
23 TREATMENT IF WARRANTED.

24 Q. AND THIS EXHIBIT HERE, I THINK IT'S GOING TO BE
25 EXHIBIT 2, I'M NOT SURE, I THINK THAT'S CORRECT --

1 THE COURT: IT WILL BE NUMBER 2.

2 MS. SMITH: NUMBER 2.

3 Q. HOW MANY MONTHLY REPORTS DID MR. SAYNE PROVIDE YOU
4 FROM JANUARY 8, 2008 UNTIL JANUARY 20, 2009?

5 A. IT WOULD HAVE BEEN 11.

6 Q. ELEVEN MONTHLY REPORTS. AND HOW MANY EARNINGS
7 STATEMENTS WERE ATTACHED TO THOSE 11 MONTHLY REPORTS?

8 A. WELL, I WAS GOING TO SAY 11, BUT -- DO YOU WANT ME
9 TO COUNT THEM?

10 Q. WELL, DID HE SUBMIT TWO PER MONTH APPROXIMATELY?
11 THAT'S WHAT IT LOOKS LIKE.

12 A. APPROXIMATELY TWO PAY STUBS DURING EACH MONTH WHEN
13 HE'S SUBMITTING THE MONTHLY REPORTING FORM WERE PROVIDED
14 TO THE PROBATION OFFICE.

15 Q. AND HOW MANY NET WORTH OR CASH FLOW STATEMENTS DID
16 HE SUBMIT TO YOU DURING YOUR SUPERVISION?

17 A. TWO, ONCE APPROXIMATELY EVERY SIX MONTHS.

18 Q. DID MR. SAYNE EVER DISCLOSE TO YOU THAT HE HAD
19 BORROWED OR TAKEN \$55,000 FROM MRS. ELLIS TO BEGIN A
20 BUSINESS KNOWN AS PERFECTION AUTO DETAILING?

21 A. HE DID NOT.

22 Q. DID HE EVER DISCLOSE TO YOU THAT HE HAD ENTERED INTO
23 A BUSINESS WITH SOMEONE NAMED ANGELA ALLEN AND THAT THE
24 NAME OF THAT BUSINESS WAS PERFECTION AUTO DETAILING?

25 A. HE DID NOT.

1 Q. DID HE EVER DISCLOSE TO YOU THAT HE HAD BORROWED ANY
2 SUMS OF MONEY FROM ANYONE?

3 A. HE DID NOT.

4 Q. DID HE EVER DISCLOSE TO YOU THAT HE HAD BEEN GIFTED
5 LARGE SUMS OF MONEY FROM ANYONE?

6 A. HE DID NOT.

7 Q. DID HE EVER DISCLOSE TO YOU THAT HE HAD STARTED ANY
8 TYPE OF BUSINESS?

9 A. NO, MA'AM.

10 Q. IF HE HAD EXPOSED ANY OF THESE THINGS, WHAT WOULD
11 HAVE BEEN YOUR CONCERN AS HIS SUPERVISING PROBATION
12 OFFICER, THAT WOULD BE BORROWING MONEY OR TAKING MONEY OR
13 STARTING A BUSINESS?

14 A. WELL, IF -- COULD WE TAKE YOUR QUESTIONS IN ORDER?

15 Q. YES, SIR.

16 A. THAT MIGHT BE A LITTLE BIT EASIER FOR ME TO
17 ANSWER.

18 Q. SURE.

19 A. DO YOU MIND TO --

20 Q. HOW ABOUT JUST BORROWING MONEY, \$55,000 FROM HIS
21 GRANDMOTHER?

22 A. WELL, OBVIOUSLY THE PROBATION OFFICER WOULD WANT TO
23 KNOW FOR WHAT PURPOSE GIVEN THE FACT THAT MR. SAYNE OWED
24 APPROXIMATELY 105 OR \$107,000 ON THE OLD CASE, THE 2003
25 CASE. HAD HE APPROACHED ME FOR THAT MUCH MONEY TO OPEN A

1 BUSINESS, I WOULD HAVE DENIED THAT. I WOULD HAVE SAID, IF
2 YOU'RE GOING TO BORROW MONEY, THE BEST PLACE TO SPEND THAT
3 MONEY IS PAY YOUR RESTITUTION. I WOULD HAVE INVESTIGATED
4 FURTHER TO SEE WHAT TYPE OF PAYMENT PLAN HE WOULD HAVE HAD
5 TO HAVE ARRANGED; BUT BASED ON A PAYMENT OF HALF, MORE
6 THAN LIKELY I WOULD NOT HAVE APPROVED HIM BORROWING THAT
7 MUCH MONEY.

8 Q. HOW ABOUT IF HE HAD BEEN GIFTED \$55,000?

9 A. I WOULD HAVE REQUIRED MR. SAYNE TO PAY THE ENTIRE
10 SUM TO THE COURT.

11 Q. AND HOW ABOUT IF HE STARTED A BUSINESS, IF YOU HAD
12 KNOWN, HAD KNOWN THAT INFORMATION?

13 A. ASSUMING THAT HE HAD TO BORROW THE MONEY, I WOULD
14 NOT HAVE PERMITTED THAT TO OCCUR.

15 Q. BUT JUST STARTING A BUSINESS WITH SOMEONE ELSE WHICH
16 INVOLVES A CREDIT CARD PROCESSOR, AS THIS ONE DID
17 APPARENTLY?

18 A. WELL, I WOULD HAVE BEEN CURIOUS ON, OF HOW HE WAS
19 GOING TO CONTINUE WORKING FOR MR. DAVID WALTERS, AS HE
20 REPORTED TO ME, AS WELL AS CONTINUE OR START THIS BUSINESS
21 OF PERFECTION AUTO DETAIL. TO SAY WHETHER I WOULD HAVE
22 APPROVED OR DENIED, I MEAN, THAT'S A WHAT-IF, I'M SORRY, I
23 JUST CAN'T GIVE YOU A DIRECT ANSWER.

24 Q. BUT IT WOULD HAVE CAUSED YOU TO INQUIRE FURTHER; IS
25 THAT CORRECT?

1 A. YES, MA'AM.

2 Q. WAS IT PLAUSIBLE FOR MR. SAYNE TO BELIEVE THAT HE
3 COULD WORK FOR ANGELA ALLEN IN THIS DETAILED BUSINESS
4 WITHOUT TELLING YOU ABOUT HER, ABOUT IT AND LATER DISCLOSE
5 THE EMPLOYMENT TO YOU ONCE THE BUSINESS BECAME VIABLE?

6 MR. BLACKWELL: YOUR HONOR, I'M GOING TO OBJECT
7 TO USING THE WORD "PLAUSIBLE", I THINK THAT CALLS FOR A
8 CONCLUSION THAT ONLY MR. SAYNE CAN MAKE. I THINK THE
9 QUESTION ASKED IS, COULD BE ASKED A DIFFERENT WAY, AND I
10 OBJECT TO THE FORM OF THE QUESTION.

11 THE COURT: WELL, LET ME TRY MY HAND AT THIS.
12 I TAKE IT YOU HAD ABSOLUTELY NO KNOWLEDGE DURING THIS
13 PERIOD OF TIME THAT PERFECTION AUTO DETAILED EVEN
14 EXISTED; IS THAT CORRECT?

15 THE WITNESS: THAT'S CORRECT, I HAD NO
16 KNOWLEDGE.

17 THE COURT: MR. SAYNE NEVER REPORTED ANY
18 ASSOCIATION WITH THIS YOUNG LADY IN THAT BUSINESS OR ANY
19 OTHER BUSINESS; CORRECT?

20 THE WITNESS: THAT'S TRUE.

21 THE COURT: DID HE EVER REPORT ANY INCOME FROM
22 THAT BUSINESS?

23 THE WITNESS: NO, YOUR HONOR.

24 THE COURT: DID HE EVER REPORT ANY EXPENDITURE
25 TO OPEN THAT BUSINESS?

1 THE WITNESS: NO, YOUR HONOR.

2 THE COURT: SO THERE WAS ABSOLUTELY NO
3 DISCLOSURE WHATSOEVER RELATING TO THAT BUSINESS?

4 THE WITNESS: THAT'S CORRECT.

5 THE COURT: OKAY.

6 MS. SMITH: IF I MAY, YOUR HONOR, JUST READING
7 FROM THE DEFENDANT'S SENTENCING MEMORANDUM, FOOTNOTE 1 ON
8 PAGE 7, THE PLAN WAS FOR THE DEFENDANT TO WORK FOR ALLEN
9 AND DISCLOSE THE EMPLOYMENT TO THE PROBATION OFFICE ONCE
10 THE BUSINESS BECAME Viable; BUT THAT HAD BEEN --

11 THE COURT: I NOTED THAT, AND I ALSO NOTED THAT
12 HE TOLD THE PROBATION OFFICER THAT HE OWNED AND OPERATED
13 THE BUSINESS, SO I UNDERSTAND YOUR POINT.

14 MS. SMITH: THANK YOU. THE POINT IS MADE.
15 THANK YOU, YOUR HONOR.

16 Q. DID MR. SAYNE EVER INDICATE TO YOU DURING THE TIME
17 YOU HAD HIM UNDER SUPERVISION THAT HE WAS DEPRESSED AFTER
18 ANOTHER PERSONAL AND BUSINESS FAILURE AND LOSING HIS
19 GRANDMOTHER'S MONEY?

20 A. NO, MA'AM.

21 Q. DID MR. SAYNE EVER DISPLAY ANY SYMPTOMS ASSOCIATED
22 WITH CLINICAL DEPRESSION?

23 MR. BLACKWELL: YOUR HONOR, I'M GOING TO OBJECT
24 TO THIS. I THINK WE FINALLY REACHED A POINT THAT THIS
25 MIGHT BE OUTSIDE MR. THORNTON'S EXPERTISE. IT'S CALLING

1 FOR A MEDICAL OPINION THAT I DON'T THINK HE CAN GIVE.

2 THE COURT: I THINK HE CAN TESTIFY AS TO WHAT
3 HE OBSERVED, HE JUST CANNOT DIAGNOSE.

4 Q. DID HE EVER DISPLAY ANY SYMPTOMS ASSOCIATED WITH
5 DEPRESSION, MR. THORNTON?

6 MR. BLACKWELL: WELL, YOUR HONOR, AGAIN, I
7 THINK IF SHE WANTS TO ASK HIM WHAT HE SAW RATHER THAN
8 SAYING THEY WERE SYMPTOMS OF SOME TYPE OF MENTAL ILLNESS,
9 I THINK THAT'S AN APPROPRIATE QUESTION; OTHERWISE, I
10 OBJECT TO THE FORM OF THE QUESTION.

11 THE COURT: WELL, I THINK THE SYMPTOMS
12 GENERALLY ASSOCIATED WITH DEPRESSION ARE PRETTY WELL
13 ESTABLISHED, AND IT WOULD NOT TAKE A MEDICAL PROFESSIONAL
14 TO ANSWER A QUESTION AS TO WHETHER OR NOT HE SAW ANYTHING
15 THAT HE WOULD ASSOCIATE WITH DEPRESSION, AND HE CAN ANSWER
16 TO THAT EXTENT.

17 DID YOU SEE ANYTHING BY MR. SAYNE, ANY
18 BEHAVIOR, DID HE TELL YOU ANYTHING, DID YOU OBSERVE OR
19 HEAR ANYTHING THAT YOU WOULD ASSOCIATE WITH SYMPTOMS OF
20 DEPRESSION?

21 THE WITNESS: NO, SIR.

22 THE COURT: DID HE EVER ASK YOU FOR ASSISTANCE
23 IN GETTING MENTAL HEALTH TREATMENT FOR DEPRESSION?

24 THE WITNESS: NO, YOUR HONOR.

25 Q. HAD MR. SAYNE DISCLOSED HIS DEPRESSION OR ABUSE OF

1 DRUGS, WHAT WOULD HAVE BEEN YOUR RESPONSE?

2 A. IT WOULD HAVE BEEN SIMILAR REGARDING THE SUBSTANCE
3 ABUSE SCENARIO. IF HE HAD DISCLOSED ANY MENTAL HEALTH
4 NEEDS TO THE PROBATION OFFICE, HE WOULD HAVE BEEN REFERRED
5 FOR AN ASSESSMENT. AN ASSESSMENT WOULD HAVE BEEN REVIEWED
6 WITH THE PROVIDER, MR. SAYNE; AND IF NECESSARY, TREATMENT
7 WOULD HAVE BEEN WARRANTED.

8 Q. DID YOU RUN A CREDIT BUREAU CHECK OR SOME SORT OF
9 CHECK TO DETERMINE IF MR. SAYNE HAD BORROWED ANY MONEY OR
10 STARTED ANY BUSINESSES WHILE HE WAS UNDER YOUR
11 SUPERVISION?

12 A. YES, MA'AM. THOSE, THE CREDIT BUREAUS ARE REQUESTED
13 ABOUT THE SAME TIME THAT THE PERSONAL FINANCIAL STATEMENT
14 IS REQUIRED TO BE COMPLETED. WE USE THOSE IN CONJUNCTION
15 WITH ONE ANOTHER TO -- IN MR. SAYNE'S CASE HE HAD A
16 CONDITION OF NO NEW CREDIT, AND THAT WAS THE PURPOSE OF
17 THE PROBATION OFFICE REQUESTING THE CREDIT BUREAUS, THE
18 TWO THAT WE RAN.

19 Q. SO YOU -- BOTH THOSE REPORTS CAME BACK AND SAID,
20 REPORTED NEGATIVE; IS THAT CORRECT?

21 A. NO NEW ACCOUNTS.

22 Q. NO NEW ACCOUNTS. AND I'M GOING TO ASK YOU, WE'RE
23 JUST GOING TO GO THROUGH A FEW OF THE EXHIBITS HERE THAT
24 WE'VE ALREADY TABBED IN EXHIBIT 2. ON THE VERY FIRST ONE,
25 THE VERY FIRST PAGE, THE HIGHLIGHTED PART, WAS THIS ALL

1 WRITTEN IN BY MR. SAYNE OR WAS THIS WRITTEN BY YOU AND
2 AFFIRMED BY HIM?

3 A. THAT?

4 Q. THESE TWO YELLOW PARTS RIGHT HERE. I DON'T KNOW IF
5 YOU CAN SEE THE YELLOW LINE.

6 A. THAT IS MR. SAYNE'S HANDWRITING.

7 Q. SO HE DISCLOSED THAT HE WAS GIVEN \$615 BY HIS
8 GRANDMOTHER ON JANUARY 28?

9 A. FOR THE REPAIR OF THE VEHICLE.

10 Q. OKAY. THANK YOU. LET'S GO TO THE NEXT TAB, WHICH
11 IS THE REPORT FOR JUNE OF 08. I NOTICE THERE'S QUESTIONS
12 THERE, DID YOU CHANGE JOBS, WERE YOU TERMINATED; AND IF
13 YOU CHANGED JOBS OR TERMINATED, AND HE PUT IN, NO, NO AND
14 NOT APPLICABLE; AND DOWN AT THE BOTTOM IT LISTS ALL
15 EXPENDITURES OVER \$500, WOULD THIS HAVE INCLUDED ANY
16 EXPENDITURES FOR THIS BUSINESS, PERFECTION AUTO
17 DETAILING?

18 A. YES, THAT WOULD HAVE BEEN A PLACE, PARDON ME, THAT
19 HE WOULD HAVE THE OPPORTUNITY TO PROVIDE THAT INFORMATION.

20 ANOTHER CONDITION OF HIS SUPERVISION IS THAT
21 HE'S REQUIRED TO DISCLOSE TO THE PROBATION OFFICE ANY
22 CHANGE IN RESIDENCE OR EMPLOYMENT. I BELIEVE THE
23 CONDITION READS WITHIN 10 DAYS OF THE EVENT. THE
24 PROBATION OFFICE WAS NEVER ADVISED OR NOTIFIED.

25 Q. THANK YOU. IF YOU'LL GO TO THE NEXT TABBED SHEET --

1 WELL, I TELL YOU WHAT, WE'LL JUST STOP RIGHT THERE AND
2 WE'LL LOOK AT SOME OF THESE EARNING STATEMENTS. DID YOU
3 DETERMINE THAT MR. SAYNE FABRICATED ALL 23 OF THESE
4 EARNING STATEMENTS AT A LATER TIME?

5 A. AT A LATER TIME, YES, MA'AM. I HAVE A LETTER SIGNED
6 BY DAVID WALTERS. IF I COULD, I'D --

7 Q. CERTAINLY.

8 MR. BLACKWELL: YOUR HONOR, I HAVEN'T SEEN THAT
9 LETTER, AT LEAST THAT I KNOW OF.

10 THE COURT: ALL RIGHT. LET MR. BLACKWELL SEE
11 THE LETTER.

12 Q. THE NEXT TAB IS PART OF HIS NET WORTH STATEMENT, HIS
13 PERIODIC NET WORTH STATEMENT; AND IT SAYS BUSINESS
14 HOLDINGS, DOWN HERE, AND I BELIEVE THE DATE ON THIS
15 STATEMENT IS SEPTEMBER 22, 2008, AS INDICATED AT THE
16 BOTTOM OF THE PAGE. IS THAT MR. SAYNE'S SIGNATURE AND
17 HANDWRITING AGAIN OR IS THAT YOURS AND THEN HE JUST
18 AFFIRMED IT?

19 A. THAT IS MR. SAYNE'S INITIALS, AS WELL AS THAT
20 PARTICULAR DATE.

21 Q. AND WOULD IT HAVE BEEN APPROPRIATE FOR HIM TO
22 DISCLOSE THIS PERFECTION AUTO DETAILING THERE?

23 A. THAT SPACE IS SPECIFICALLY PROVIDED FOR ANY TYPE OF
24 BUSINESS HOLDINGS OR PARTNERSHIPS.

25 Q. JUST ONE PAGE OVER, IT SAYS, TRANSFER OF ASSETS.

1 CAN YOU READ THAT OUT LOUD, TRANSFER OF ASSETS, PAREN
2 SOMETHING, CAN YOU READ IT OUT LOUD?

3 A. THERE IN PARENTHESES?

4 Q. YES, SIR.

5 A. INCLUDE ANY ASSETS YOU HAVE TRANSFERRED OR SOLD
6 SINCE THE DATE OF YOUR ARREST WITH A COST OR MARKET VALUE
7 OF MORE THAN \$500. ALSO LIST ANY ASSETS THAT SOMEONE
8 ELSE --

9 Q. IS HOLDING ON YOUR BEHALF?

10 A. IS HOLDING ON YOUR BEHALF, YES, MA'AM.

11 Q. SO IN FACT IF MS. ALLEN WAS HOLDING THIS BUSINESS IN
12 MR. SAYNE'S NAME, AS IS IN THE SENTENCING MEMORANDUM,
13 WOULD IT BE PROPER TO LIST THAT IN THAT?

14 A. YES, SIR.

15 Q. LET'S GO TO THE NEXT PAGE OF THAT JULY MONTHLY CASH
16 FLOW STATEMENT OF JULY 22 OF 08, WAS HE ASKED TO DISCLOSE
17 GIFTS FROM FAMILY AND GIFTS FROM OTHERS?

18 A. YES.

19 Q. AND HE PUT NA; IS THAT TRUE?

20 A. NOT APPLICABLE, YES, MA'AM.

21 Q. HE DID EXPOSE HIS GRANDMOTHER'S SOCIAL SECURITY
22 INCOME; DIDN'T HE, INCOME OF OTHERS IN-HOUSE?

23 A. YES; WITH THE ASTERISKS, YES.

24 Q. IS THERE ALSO A PLACE ON EACH MONTHLY REPORT FOR THE
25 PROBATIONER OR THE SUPERVISEE TO DISCLOSE HIS POSSESSION

1 OR USE OF ILLEGAL DRUGS?

2 A. YES, MA'AM. IT'S ON THE SECOND PAGE.

3 Q. AND IS THIS ONE DATED AUGUST 1, 2008, WAS THE, HOW
4 IT APPEARS HERE?

5 A. I CAN'T SEE THE BOTTOM THERE BY HIS SIGNATURE LINE,
6 IF YOU WOULD SLIDE THAT UP JUST A LITTLE.

7 Q. SURE. CAN YOU SEE THAT RIGHT THERE, DID YOU POSSESS
8 OR USE ANY ILLEGAL DRUG?

9 A. CORRECT, AND HE'S MARKED NO; AND THEN ADDRESSING ANY
10 TYPE OF DRUG, HE'S MARKED NA OR WRITTEN IN NA.

11 Q. SO FOR ALL 11 MONTHLY REPORTS HE NEVER DISCLOSED ANY
12 DRUG USAGE OR CERTAINLY DRUG ABUSE; DID HE?

13 A. THAT'S CORRECT.

14 Q. SAME FOR THE NEXT MONTH, SEPTEMBER 12, 2008?

15 A. IF YOU'LL GIVE ME JUST A MOMENT TO GET --

16 Q. YES, SIR.

17 A. FLIP TO THESE HARD COPIES.

18 Q. THE ONE DATED SEPTEMBER 12.

19 A. YES, MA'AM.

20 Q. THE ONE DATED OCTOBER 1.

21 A. REGARDING THE DRUG USE QUESTION?

22 Q. THAT'S CORRECT.

23 A. IS MARKED NO.

24 Q. NOVEMBER 14?

25 A. AGAIN, A REPLY OF NO.

1 Q. AND DECEMBER 3 OF 08?

2 A. THE SAME.

3 Q. THE SAME THERE. AND I GUESS WAS HIS LAST OR SECOND
4 TO LAST ONE THAT HE GAVE TO YOU, JANUARY 2 OF 2009?

5 A. HE MARKED NO.

6 Q. AND, AGAIN, THE LAST NET WORTH STATEMENT THAT HE
7 GAVE TO YOU ON JANUARY 15, 2009, DID HE DISCLOSE THIS
8 BUSINESS OR ITS FAILURE OR ANY DEBTS OR ANYTHING HAVING TO
9 DO WITH THIS BUSINESS THAT HE STARTED?

10 A. HE DID NOT.

11 Q. AND HE FAILED TO DISCLOSE ANY GIFTS EITHER; DID
12 HE?

13 A. THAT WOULD BE ON THE LAST TAB, I BELIEVE.

14 Q. YES, SIR?

15 A. THAT'S CORRECT, IT'S MARKED NA.

16 Q. AND THAT'S DATED JANUARY?

17 A. YES, DATED JANUARY 15, 2009.

18 MS. SMITH: THANK YOU. I HAVE NO FURTHER
19 QUESTIONS OF THE PROBATION OFFICER, YOUR HONOR.

20 THANK YOU, OFFICER THORNTON.

21 THE COURT: ALL RIGHT. MR. BLACKWELL, ANY
22 QUESTIONS?

23 CROSS EXAMINATION

24 BY MR. BLACKWELL:

25 Q. HI, MR. THORNTON.

1 A. GOOD AFTERNOON.

2 Q. KIND OF FUNNY BEING ON THESE SIDES; ISN'T IT? LET
3 ME JUST ASK YOU A COUPLE OF QUESTIONS. WHILE YOU WERE
4 TESTIFYING ABOUT EVERYTHING THAT MR. SAYNE HAD DONE, I
5 WENT BACK AND LOOKED AT THE INFORMATION, AND YOU WOULD
6 AGREE WITH ME THAT EVERYTHING YOU'VE TESTIFIED ABOUT, WHAT
7 HE TOLD YOU, WHAT HE DIDN'T TELL YOU, WHAT HE SUPPLIED
8 YOU, WHAT HE SHOULD HAVE SUPPLIED YOU, ALL THAT IS
9 CONTAINED IN COUNT 1, AND HE PLED GUILTY TO THAT; DIDN'T
10 HE?

11 A. THAT'S MY UNDERSTANDING.

12 Q. AND WHAT YOU'RE DOING TODAY IS SIMPLY GIVING THE
13 COURT SOME BACKGROUND AS TO SOME OF THE DETAILS INVOLVED
14 IN WHAT MR. SAYNE DID WHILE HE WAS ON SUPERVISION WITH
15 YOU?

16 A. PARTICULARLY WITH SUPERVISION REPORTING FORMS AND
17 EARNING STATEMENTS.

18 Q. OKAY. LET ME ASK YOU A COUPLE OF QUESTIONS KIND OF
19 IN GENERAL FIRST. YOU SAID THAT INITIALLY WHEN HE CAME
20 INTO SUPERVISION, IT'S THE PRACTICE OF THE PROBATION
21 OFFICE TO DO A DRUG SCREEN ON AN INDIVIDUAL?

22 A. IF DRUG SCREENS WERE ORDERED. IF THE COURT FOUND
23 THAT AN OFFENDER DID NOT HAVE A, AT THE TIME OF SENTENCING
24 OR BASED ON THE PRIOR HISTORY NO SUBSTANCE ABUSE WAS
25 INDICATED AND THE COURT DID NOT REQUIRE SUBSTANCE ABUSE

1 TESTING, THE PROBATION OFFICE ORDINARILY WOULD NOT SCREEN
2 AN INDIVIDUAL AT THE FIRST MEETING OF PROBATION OR ON
3 SUPERVISED RELEASE.

4 MR. BLACKWELL: YOUR HONOR, IF I COULD HAVE
5 JUST A MINUTE.

6 THE COURT: YOU MAY.

7 A. HE HAD A SPECIAL CONDITION NUMBER 4, IF THAT'S WHAT
8 YOU'RE LOOKING FOR.

9 Q. WELL, YOU WOULD AGREE WITH ME THAT THE SPECIAL
10 CONDITIONS COME ABOUT AS A RESULT OF A PRESENTENCE REPORT
11 AND THE INVESTIGATION THE PROBATION OFFICE DOES?

12 A. I WOULD AGREE WITH YOU.

13 Q. AND WHEN MR. SAYNE CAME INTO YOUR SUPERVISION, I
14 WOULD ASSUME THAT YOU WENT BACK AND REVIEWED THE
15 PRESENTENCE REPORT IN THE EARLIER FEDERAL CASE?

16 A. YES.

17 Q. AND YOU WERE AWARE THAT IN THAT PRESENTENCE REPORT
18 THERE WAS A FAIRLY SUBSTANTIAL HISTORY OF SUBSTANCE ABUSE
19 THAT MR. SAYNE HAD?

20 A. IF YOU'LL GIVE ME A MOMENT, I'LL REFRESH MY
21 MEMORY.

22 Q. WELL, IF I CAN HELP A LITTLE BIT, I'VE GOT IT HERE
23 AND I CAN PUT IT ON THE SCREEN. IT SAYS, I BELIEVE, IN
24 PARAGRAPH 57, ACCORDING TO DEFENDANT SAYNE, HE FIRST
25 CONSUMED ALCOHOL AT THE AGE OF 19 AND REPORTED THAT WHEN

1 NOT INCARCERATED CONSUMES ALCOHOL TWO TO THREE TIMES PER
2 WEEK. DEFENDANT SAYNE STATED THAT HE EXPERIMENTED WITH
3 MARIJUANA AT THE AGE OF 19 OR 20 AND FIRST USED COCAINE
4 DURING 1998. HE REPORTED THAT HE USED COCAINE REGULARLY
5 ON WEEKENDS FROM APPROXIMATELY 1998 THROUGH 2000. HE ALSO
6 STATED THAT HE HAD PREVIOUSLY USED METHAMPHETAMINE,
7 VALIUM, XANAX AND ECSTASY. HE DENIES ANY ALCOHOL OR DRUG
8 TREATMENT. ACCORDING TO THE UNITED STATES PRETRIAL
9 SERVICES OFFICER, THE DEFENDANT SUBMITTED TO A URINE
10 SCREEN AT THE TIME OF HIS INTERVIEW WITH NEGATIVE RESULTS.
11 SO YOU WOULD AGREE WITH ME THAT WHEN HE WAS SENTENCED IN
12 THIS COURT BACK IN 2003 THAT MR. SAYNE HAD A SUBSTANCE, A
13 SERIOUS SUBSTANCE ABUSE PROBLEM; WOULDN'T YOU?

14 A. FIVE YEARS BEFORE I BECAME ACQUAINTED WITH MR.
15 SAYNE, YES, SIR, I WOULD AGREE WITH THAT.

16 Q. RIGHT. AND IT'S BECAUSE OF THAT SUBSTANCE ABUSE
17 PROBLEM THAT THE SPECIAL CONDITIONS IN HIS CASE REQUIRED
18 SOME SUBSTANCE ABUSE TESTING?

19 A. I WOULD AGREE WERE THAT STATEMENT, YES, SIR.

20 Q. AND THE FIRST DRUG SCREEN HE WAS GIVEN WAS GIVEN
21 WHEN?

22 A. JANUARY 8, AT OUR INITIAL MEETING, OF 2008.

23 Q. AND CAN YOU GIVE ME A SENSE THEN OF ON WHAT BASIS
24 SUBSEQUENT DRUG SCREENS WERE TAKEN FROM MR. SAYNE?

25 A. SPECIFICALLY ARE YOU ASKING NUMBERS OR FREQUENCY?

1 Q. WELL, FIRST NUMBERS, JUST GIVE ME A BALL PARK NUMBER
2 OF HOW THE DRUG SCREENS WERE DONE FROM THE TIME MR. SAYNE
3 CAME INTO CUSTODY UNTIL THEY STOPPED BEING DONE.

4 MS. SMITH: I THINK SUPERVISION, NOT CUSTODY.

5 Q. I'M SORRY, SUPERVISION.

6 A. NINE.

7 Q. OKAY, AND THE NINE THAT WERE DONE WERE DONE BETWEEN
8 JANUARY OF 2008 AND JULY 17 OF 2008?

9 A. THAT'S CORRECT.

10 Q. AND I WOULD TAKE IT THAT ON THOSE OCCASIONS,
11 OBVIOUSLY, MR. SAYNE EITHER CAME TO YOUR OFFICE OR YOU
12 WENT TO HIM AND THOSE DRUG SCREENS WERE OBSERVED?

13 A. MR. SAYNE WAS REFERRED ON THE CODE-A-PHONE AND WOULD
14 HAVE BEEN REQUIRED TO REPORT WHEN HIS COLOR CAME UP.

15 Q. ALL RIGHT. DURING, DURING THAT SAME TIME HOW OFTEN
16 DID YOU SEE MR. SAYNE FACE-TO-FACE BETWEEN JANUARY OF 2008
17 AND JULY 17 OF 2008?

18 A. ARE YOU ASKING APPROXIMATELY?

19 Q. YES, SIR. I DON'T WANT YOU TO GO BACK THROUGH YOUR
20 RECORDS AND ADD THEM ALL UP, JUST GIVE ME A SENSE OF HOW
21 FREQUENTLY.

22 A. AT LEAST TWO, POSSIBLY THREE TIMES FROM JANUARY TO
23 JULY.

24 Q. NOW, IS THAT TWO OR THREE TIMES A MONTH OR TWO OR
25 THREE TIMES TOTAL?

1 A. THE TOTAL.

2 Q. AND DURING THOSE TWO OR THREE TIMES TOTAL HOW MUCH
3 TIME WOULD YOU SPEND WITH HIM?

4 A. WITH MR. SAYNE?

5 Q. RIGHT.

6 A. IN MR. SAYNE'S CASE, PROBABLY NO MORE THAN TEN
7 MINUTES AT THE RESIDENCE.

8 Q. SO WE'RE TALKING PROBABLY 30 MINUTES OR SO BETWEEN
9 JANUARY OF 2008 AND JULY OF 2008 THAT YOU SPENT
10 FACE-TO-FACE WITH HIM?

11 A. IN THE FIELD AT HIS HOME.

12 Q. OKAY.

13 A. CORRECT.

14 Q. AND YOU WOULD AGREE WITH ME THAT PEOPLE WHO SUFFER
15 FROM DEPRESSION, THAT'S NOT ALWAYS EASILY RECOGNIZABLE; IS
16 IT?

17 A. YOU WANT ME TO AGREE WITH YOU?

18 Q. YES, SIR. WELL, YOU DON'T HAVE TO; BUT IF YOU WOULD
19 AGREE WITH ME A LOT OF PEOPLE THAT SUFFER FROM DEPRESSION,
20 THAT'S NOT EASILY RECOGNIZABLE BY OTHERS?

21 A. IN MR. SAYNE'S CASE I HAD NO INDICATION THAT HE WAS
22 SUFFERING FROM DEPRESSION. HE HAD A GOOD MOOD, SAID
23 EVERYTHING WAS GOING WELL. HIS GRANDMOTHER WAS TYPICALLY
24 HOME DURING MY VISITS, AND SHE EXPRESSED THE SAME
25 FEELINGS.

1 Q. WELL, OF COURSE, DURING, IT WAS DURING THIS TIME,
2 BASED ON YOUR TESTIMONY, FROM MARCH OF 2008 UNTIL JANUARY
3 OF 2009, THAT HE WAS ACTIVELY INVOLVED IN THIS SCHEME TO
4 KEEP YOU FROM KNOWING THAT HE HAD THIS OTHER BUSINESS;
5 ISN'T THAT CORRECT?

6 A. ASK YOUR QUESTION AGAIN, PLEASE.

7 Q. DURING, IT WAS DURING THIS SAME TIME, BETWEEN MARCH
8 3 OF 2008 AND JANUARY 20 OF 2009 AS CHARGED IN COUNT 1,
9 THAT HE WAS ACTIVELY INVOLVED IN THIS SCHEME YOU'VE
10 TESTIFIED ABOUT IN KEEPING INFORMATION FROM YOU; WASN'T
11 HE?

12 A. YOU'RE ASKING WAS HE ACTIVELY INVOLVED IN A SCHEME,
13 YES, HE WAS.

14 Q. AND IT WAS IN THE SCHEME THAT HE WAS KEEPING
15 INFORMATION FROM YOU; WASN'T IT?

16 A. AS WELL AS OTHER THINGS.

17 Q. OKAY. AS WELL AS HIS ATTITUDE AND AS WELL AS HIS
18 BEHAVIOR IN FRONT OF YOU; WOULDN'T YOU AGREE?

19 A. IT'S POSSIBLE.

20 Q. OKAY. NOW, YOU SAID THE LAST TIME THAT, THE LAST
21 DRUG SCREEN THAT YOU GAVE WAS ON JULY 17 OF 2008.

22 A. MR. SAYNE, THAT WAS MR. SAYNE'S LAST SCREEN.

23 Q. OKAY, AND IF YOU WOULD, TELL ME AGAIN, BECAUSE I
24 DON'T UNDERSTAND WHAT WAS THE REASON AT THAT POINT THAT
25 YOU MADE A DETERMINATION THAT NO ADDITIONAL DRUG SCREENS

1 WERE NEEDED?

2 A. PROBATION OFFICE USES A PHASE SYSTEM WITH OFFENDERS
3 WHO ARE ORDERED TO PARTICIPATE IN DRUG TESTING OR
4 SUBSTANCE ABUSE TREATMENT. MR. SAYNE WAS PLACED IN PHASE
5 3, WHICH IS THE LOWEST. THAT TYPICALLY IS FOR A PERIOD OF
6 SIX MONTHS. HE WAS GIVEN A COLOR THAT REQUIRED TESTING ON
7 A MONTHLY, AT LEAST A MONTHLY BASIS. SEE, IN APRIL HE WAS
8 REQUIRED TO TEST TWICE, IN JULY HE WAS REQUIRED TO TEST
9 TWICE, SO IT WAS A COLOR THAT CAME UP AT LEAST ONCE AND
10 POSSIBLY TWO TIMES A MONTH.

11 Q. OKAY.

12 A. WITH ALL OF HIS SCREENS RESULTING WITH NEGATIVE
13 RESULTS, THERE WAS NO INDICATION TO THE PROBATION OFFICE
14 AT THAT TIME THAT MR. SAYNE WAS IN NEED OF FURTHER
15 TESTING, SO HE WAS TERMINATED FROM THE CODE-A-PHONE.

16 Q. ALL RIGHT, SO FROM JULY 17 OF 2008 UNTIL THE DAY OF
17 HIS ARREST IN 2009, HE WAS NOT TESTED AS A RESULT OF BEING
18 ON SUPERVISION WITH THE PROBATION OFFICE?

19 A. HE WAS SUBJECT TO BEING TESTED.

20 Q. RIGHT.

21 A. THE CONDITION DIDN'T GO AWAY. HE WAS JUST NOT
22 REQUIRED TO REPORT FOR A CODE-A-PHONE.

23 Q. SO HE WAS NOT TESTED AFTER JULY 17 OF 2008 UNTIL HE
24 WAS ARRESTED IN JANUARY OF 2009?

25 A. THAT'S CORRECT.

1 Q. ALL RIGHT. NOW, ARE YOU FAMILIAR, HAVE YOU SINCE
2 LEARNED ABOUT PERFECTION AUTO DETAILING?

3 A. ALL THAT I KNOW ABOUT PERFECTION AUTO DETAILING IS
4 IN THE PRESENTENCE REPORT AND IN YOUR SENTENCING
5 MEMORANDUM.

6 Q. OKAY. ASSUMING THE PRESENTENCE REPORT AND MY
7 SENTENCING MEMORANDUM ARE CORRECT AND THAT PERFECTION AUTO
8 DETAILING BEGAN IN AUGUST OR SEPTEMBER OF 2008, CAN YOU
9 TELL ME FROM JULY 17 OF 2008 UNTIL HE WAS ARRESTED HOW
10 MANY TIMES YOU MET WITH MR. SAYNE FACE-TO-FACE?

11 A. I'LL HAVE TO LOOK THROUGH MY FILE.

12 Q. WELL, AGAIN, CAN YOU GIVE ME A BALL PARK?

13 A. PROBABLY ONCE EVERY THREE MONTHS.

14 Q. OKAY, SO DURING THAT TIME FRAME YOU MIGHT HAVE MET
15 WITH HIM TWICE BETWEEN, BETWEEN JULY, BETWEEN AUGUST OR
16 SEPTEMBER OF 2008 AND WHEN HE WAS ARRESTED IN JANUARY OF
17 2009?

18 A. YES.

19 Q. NOW, IN READING THE PRESENTENCE REPORT AND MY
20 SENTENCING MEMORANDUM, IF THE BUSINESS HAD OPENED AND IT
21 HAD FAILED, YOU DON'T KNOW OR HAVE ANY IDEA WHETHER MR.
22 SAYNE AT THAT POINT RESORTED BACK TO USING VALIUM OR SOME
23 OTHER ILLEGAL SUBSTANCES; DO YOU?

24 A. I HAVE NO IDEA.

25 Q. AND THERE WASN'T ANY NEED ON YOUR PART BASED ON WHAT

1 YOU KNEW AT THE TIME TO RESTART ANY OF THE DRUG TESTING
2 PROCEDURES THAT HAD BEEN IN PLACE BEFORE?

3 A. BASED ON THE INFORMATION KNOWN AT THE TIME, THAT'S
4 CORRECT.

5 Q. WHEN WAS THE LAST TIME YOU SAW MR. SAYNE BEFORE HE
6 WAS ARRESTED?

7 A. WELL, I WAS HERE IN THE BUILDING THE DAY THAT HE WAS
8 ARRESTED. HOLD ON JUST A MOMENT.

9 Q. I MEAN, THAT'S THE DATE I'D KIND OF LIKE TO KNOW,
10 AND I HOPE IT DOESN'T TAKE LONG TO FIND IT.

11 A. I ATTEMPTED A VISIT NOVEMBER 18 AND MET WITH
12 MS. ELLIS. MR. SAYNE WAS NOT HOME THAT DAY. THAT I
13 PERSONALLY MET WITH MR. SAYNE?

14 Q. YES, SIR, THAT YOU SAW HIM FACE-TO-FACE.

15 A. WELL, HERE'S JULY 8, EXCUSE ME, JULY 9, 2008. LET
16 ME GO FORWARD AND MAKE SURE I'VE GOT THEM ALL. IT LOOKS
17 LIKE JULY 9, 2008 WAS THE LAST FACE-TO-FACE WITH THREE
18 SUBSEQUENT ATTEMPTS.

19 Q. OKAY, SO THE LAST TIME YOU SAW HIM THEN WAS JULY 9
20 OF 2008 AND THEN UNTIL HE WAS ARRESTED IN JANUARY OF
21 2009?

22 A. CORRECT.

23 Q. AND, YOU KNOW, YOU WOULD AGREE WITH ME THAT BETWEEN
24 JULY OF 2008 AND JANUARY OF 2009 YOU DON'T KNOW WHAT HIS
25 MENTAL STATE OR MENTAL CONDITION WAS?

1 A. WELL, I CAN CONCLUDE THAT HE WAS FUNCTIONING WELL
2 ENOUGH TO PREPARE HIS MONTHLY REPORTING FORM AND SUBMIT
3 THOSE ON TIME WITHIN A DAY OR TWO. HE WAS --

4 Q. WELL, WAS HE -- I'M SORRY, GO AHEAD.

5 A. HE WAS ABLE TO PREPARE THE PERSONAL FINANCIAL
6 STATEMENT AND BRING IT TO THE COURTHOUSE ON JANUARY 20 PER
7 MY INSTRUCTIONS AND RETURN PHONE CALLS WHEN I CALLED
8 DURING THOSE, FROM JULY OF 08 UNTIL JANUARY 09.

9 Q. WELL, I UNDERSTOOD YOUR TESTIMONY ON DIRECT THAT
10 BASED ON YOUR OBSERVATIONS OF MR. SAYNE, YOU BELIEVED THAT
11 HE WAS NOT DEPRESSED. YOU WOULD AGREE WITH ME THAT HAVING
12 NO OBSERVATIONS OF MR. SAYNE BETWEEN JANUARY OF 2008 AND
13 JANUARY OF 2009 YOU COULDN'T REACH THAT SAME CONCLUSION;
14 COULD YOU?

15 A. THAT HE WAS NOT DEPRESSED?

16 Q. YOU COULDN'T REACH THAT CONCLUSION BECAUSE YOU
17 DIDN'T SEE MR. SAYNE; DID YOU?

18 A. DURING THAT PERIOD OF TIME FROM JULY TO JANUARY, NO.

19 Q. NOW, WHAT LENGTH OF TIME DOES IT TAKE FOR VALIUM TO
20 GET THROUGH A PERSON'S SYSTEM SO IT WON'T BE DETECTABLE IN
21 A DRUG SCREEN?

22 A. GOODNESS, I'VE GOT SO MANY NUMBERS AND KNOW SO MANY
23 DAYS, I WANT TO SAY 3 TO 7 DAYS.

24 Q. IT'S A FAIRLY SHORT PERIOD OF TIME; ISN'T IT?

25 A. YES.

1 MR. BLACKWELL: YOUR HONOR, THAT'S ALL.

2 THE COURT: ANYTHING ELSE, MS. SMITH?

3 MS. SMITH: I DO, YOUR HONOR.

4 REDIRECT EXAMINATION

5 BY MS. SMITH:

6 Q. HOW MANY ATTEMPTS DID YOU MAKE TO, TO CONDUCT A HOME
7 VISIT OF MR. SAYNE THERE WITH HIS GRANDMOTHER?

8 A. LET ME COUNT THEM AGAIN. I BELIEVE I COUNTED THREE,
9 BUT -- THERE WERE THREE ATTEMPTS.

10 Q. DID YOU TALK WITH HIS GRANDMOTHER EACH TIME?

11 A. YES, MA'AM.

12 Q. AND DID SHE REPORT THAT HE WAS DOING WELL,
13 SUCCESSFUL ON PROBATION, ON SUPERVISION?

14 A. MS. ELLIS, ON AUGUST 5, 2008, MS. ELLIS ADVISED THAT
15 HER GRANDSON WAS DOING WELL AND WAS WORKING IN KNOXVILLE
16 THAT PARTICULAR DAY. SEPTEMBER 23, 2008, HOME CONTACT
17 MADE. SHE ADVISED THAT GRANDSON WAS DOING WELL AND
18 WORKING IN OAK RIDGE. SHE STATED HE CONTINUES TO BE
19 RESPONSIBLE. IS THAT TWO OR THREE THAT I JUST DISCUSSED?

20 Q. TWO.

21 A. OKAY. NOVEMBER 18, 2008, HOME CONTACT MADE. SHE
22 STATED THAT GRANDSON WAS WORKING IN KNOXVILLE. PO ASKED
23 IF HE IS RESPONSIBLE AND DEPENDABLE AROUND THE HOUSE, AND
24 SHE ADVISED YES.

25 Q. DID YOU TALK WITH HIM ON THE TELEPHONE DURING THIS

1 PERIOD OF TIME FROM JULY OF 08 TO JANUARY OF 09?

2 A. YES, MA'AM, MOSTLY REGARDING PERSONAL FINANCIAL
3 STATEMENTS AND HIS RESTITUTION PAYMENTS.

4 Q. OKAY, AND AT ANY TIME HAD MR. SAYNE CALLED YOU, YOU
5 WOULD HAVE TAKEN HIS PHONE CALL; IS THAT CORRECT?

6 A. OR RETURNED HIS CALL, YES.

7 Q. OR RETURNED HIS CALL, THANK YOU. AND YOU HAVE NO
8 RECORD OF HIM REACHING OUT TO YOU WITH ANY COMPLAINTS OF
9 DEPRESSION OR DRUG USE OR ANYTHING LIKE THAT?

10 A. NO, MA'AM.

11 MS. SMITH: THANK YOU. I HAVE NO FURTHER
12 QUESTIONS, YOUR HONOR.

13 THE COURT: ANYTHING ELSE, MR. BLACKWELL?

14 MR. BLACKWELL: JUST ONE QUESTION.

15 RECROSS EXAMINATION

16 BY MR. BLACKWELL:

17 Q. MR. THORNTON, THE COUPLE OF VISITS THAT YOU
18 MENTIONED TO MS. ELLIS' HOUSE, THOSE WERE POP-IN VISITS?

19 A. UNANNOUNCED.

20 MR. BLACKWELL: THAT'S ALL.

21 EXAMINATION

22 BY THE COURT:

23 Q. OFFICER THORNTON, LET ME MAKE SURE I UNDERSTAND THIS
24 ISSUE OF DRUG TESTING. BETWEEN JULY OF 08 AND JANUARY 20
25 OF 2009 THERE WERE NO DRUG TESTS; IS THAT CORRECT?

1 A. THAT'S CORRECT.

2 Q. WAS HE DRUG TESTED AT THE TIME HE WAS ARRESTED IN
3 JANUARY OF 2009?

4 A. NO, SIR.

5 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

6 THANK YOU VERY MUCH.

7 MS. SMITH: I HAVE NO FURTHER EVIDENCE, YOUR
8 HONOR.

9 THE COURT: AND I MAY HAVE MISSPOKEN, I THINK I
10 SAID THESE MONTHLY SUPERVISION REPORTS AND ATTACHED
11 DOCUMENTS WERE EXHIBIT 2, THEY'RE ACTUALLY EXHIBIT 3. THE
12 302'S THAT MR. BLACKWELL WANTED FILED ARE NUMBER 2.

13 MS. SMITH: WE'VE GOT A COPY OF THOSE TWO, YOUR
14 HONOR, IF WE COULD STAPLE THOSE TOGETHER, THIS WOULD BE
15 EXHIBIT 2.

16 THE COURT: ALL RIGHT. IF YOU'D PROVIDE THOSE
17 TO THE CLERK, PLEASE.

18 AND THAT IS YOUR LAST WITNESS, MS. SMITH?

19 MS. SMITH: THAT'S CORRECT, YOUR HONOR.

20 THE COURT: MR. BLACKWELL, DO YOU WISH TO CALL
21 ANY WITNESSES?

22 MR. BLACKWELL: NO, YOUR HONOR.

23 THE COURT: DO EITHER OF YOU WANT TO BE HEARD
24 IN ARGUMENT ON THE GOVERNMENT'S OBJECTION THAT HAS BEEN
25 FILED?

1 MS. SMITH: I THINK IT QUALIFIES, YOUR HONOR,
2 UNDER THE, UNDER THE LAW, AND I ATTACHED TO MY SENTENCING
3 MEMORANDUM SOME SUPPORTING CASE LAW, VERY SIMILAR SCHEMES,
4 SAME LEVEL OF SOPHISTICATION, IF YOU WILL. I THINK IT
5 SHOULD APPLY. I DON'T -- ANY WAY THAT YOU LOOK AT IT, IT
6 IS A SOPHISTICATED SCHEME. I'M NOT SAYING THAT IT
7 WASN'T -- THAT YOU HAD TO BE A SUPER GENIUS TO DO IT, BUT
8 I THINK HE HAD TO GO THROUGH SEVERAL LEVELS OF OVERT
9 ACTIONS, AND I THINK IT'S IMPORTANT TO UNDERSTAND THAT
10 THESE TWO OFFENSES GO TOGETHER. HE CONCEALED FROM OFFICER
11 THORNTON THIS BUSINESS BECAUSE THIS BUSINESS GAVE HIM THE
12 CARD READERS AND THE MODEM AND THE, THE INTERNET HOOK-UP
13 WITH THE CREDIT CARD PROCESSORS, SO HE COMPLETELY
14 CONCEALED FROM OFFICER THORNTON ANY ASSOCIATION WITH THIS
15 BUSINESS, WHILE AT THE SAME TIME HE WAS CONDUCTING A VERY
16 INTENTIONAL AND MANIPULATIVE SCHEME; AND I THINK THAT THE
17 FACT THAT HE HAD IT IN THE FRONT SEAT OF HIS TRUCK WHEN HE
18 CAME FOR THE VISIT ON JANUARY 20, 2009, DEMONSTRATES THAT
19 IT WAS FAIRLY IMPORTANT TO HIM. HE HAD IT RIGHT THERE IN
20 THE BED, IN THE FRONT SEAT OF HIS TRUCK, AND ON HIS
21 COMPUTER ALONG WITH THE FABRICATED EARNING STATEMENTS WAS
22 ALL THE INFORMATION FOR THE SCHEME AS WELL. BUT, AGAIN,
23 YOUR HONOR, I WOULD RELY ON THE LAW THAT I CITED IN EITHER
24 MY OBJECTION OR THE SENTENCING MEMORANDUM, WHICH I THINK
25 SPEAKS FOR ITSELF. THANK YOU.

1 THE COURT: ALL RIGHT. THANK YOU, MS. SMITH.

2 MR. BLACKWELL.

3 MR. BLACKWELL: YOUR HONOR, THE SOPHISTICATED
4 MEANS, OBVIOUSLY, IS SET OUT IN 2B1.19C, AND IT ADDS TWO
5 LEVELS.

6 A COUPLE OF THINGS. FIRST, YOUR HONOR, IN
7 READING THE SENTENCING GUIDELINES, AND PARTICULARLY NOTE 8
8 TO THAT SECTION, WHAT IT TALKS ABOUT IS THAT THE
9 "SOPHISTICATED MEANS" MEANS IT'S ESPECIALLY COMPLEX OR
10 ESPECIALLY INTRICATE OFFENSE CONDUCT IN REFERENCE TO THE
11 EXECUTION OR CONCEALMENT OF AN OFFENSE. AND IF THE COURT
12 LOOKS AT 2B1.1 AND LOOKS AT NOTE 8 TO THAT, IT GIVES SOME
13 GUIDANCE, I BELIEVE, ON EXACTLY WHAT THAT MEANS. AND WHAT
14 THE NOTE SAYS IS THAT SOPHISTICATED MEANS MEANS ESPECIALLY
15 COMPLEX OR ESPECIALLY INTRICATE OFFENSE CONDUCT PERTAINING
16 TO THE EXECUTION OR CONCEALMENT OF AN OFFENSE. THEN IT
17 GIVES US AN EXAMPLE, AND I UNDERSTAND IT'S NOT AN ALL-
18 INCLUSIVE EXAMPLE, IN A TELEMARKETING SCHEME, LOCATING THE
19 MAIN OFFICE OF THE SCHEME IN ONE JURISDICTION BUT LOCATING
20 SOLICITING OPERATIONS IN ANOTHER JURISDICTION ORDINARILY
21 INDICATES SOPHISTICATED CONDUCT. CONDUCT SUCH AS HIDING
22 ASSETS OR TRANSACTIONS OR BOTH THROUGH THE USE OF
23 FICTITIOUS ENTRIES, CORPORATE SHELLS OR OFF-SHORE
24 FINANCIAL ACCOUNTS ALSO ORDINARILY INDICATES SOPHISTICATED
25 MEANS.

1 I WOULD POINT OUT TO THE COURT THAT I TOOK A
2 LOOK AT THE THREE CASES THAT MS. SMITH PROVIDED, AND, YOUR
3 HONOR, IN THE MASTERS CASE, AND IN ALL THREE OF THESE
4 CASES -- NONE OF THESE ARE REPORTED CASES, THEY ARE SIXTH
5 CIRCUIT CASES; BUT IN MASTERS THERE WERE A SERIES OF
6 CRIMINAL ACTIONS BY THE DEFENDANT. THE COURT DESCRIBED
7 THE SCHEME AS A MULTI-PRONGED CROSS JURISDICTIONAL SCHEME
8 WHERE THE DEFENDANT OBTAINED CREDIT CARDS WITH FALSE
9 NAMES, AND IT INVOLVED A LARGE SCALE IDENTITY THEFT
10 OPERATION. I'M SURE THE COURT HAS READ A FACTUAL, THE
11 FACTUAL SUMMARY OF THE MASTERS CASE, BUT I THINK IT'S
12 INTERESTING IN THAT THE CASE BASICALLY INVOLVED THE
13 DEFENDANT USING INFORMATION FROM REFERENCE MATERIALS TO
14 OBTAIN THE VICTIM'S BIRTH CERTIFICATE AND A CREDIT REPORT.
15 HE USED THOSE DOCUMENTS THEN AND OBTAINED MULTIPLE CREDIT
16 CARDS UNDER FALSE NAMES AND PROCEEDED TO DEFRAUD THE
17 SOCIAL SECURITY ADMINISTRATION BY GETTING OVER \$46,000 IN
18 BENEFITS WHICH HE THEN SENT TO A BANK ACCOUNT ESTABLISHED
19 UNDER A FALSE NAME. CLEARLY, YOUR HONOR, THAT IS A SCHEME
20 THAT I THINK FITS THE DEFINITION OF SOPHISTICATED MEANS.

21 THE ERWIN CASE, THE SECOND CASE THAT MS. SMITH
22 CITED TO THE COURT, INVOLVES A DEFENDANT WHO WAS THE
23 MANAGER OF A SECURITIES FIRM, I BELIEVE IN ST. LOUIS,
24 MISSOURI; AND BASICALLY WHAT HE DID, YOUR HONOR, IS HE
25 OBTAINED MONEY FROM CLIENT ACCOUNTS, AND THERE WERE 11

1 CLIENT ACCOUNTS INVOLVED. AND THE CASE ITSELF SAYS THAT
2 HE CHANGED THE ADDRESSES LISTED ON THE CLIENTS' ACCOUNTS
3 SO THE DISTRIBUTION WOULD BE SENT TO HIM. HE THEN
4 REQUESTED DISTRIBUTIONS THAT WERE NOT AUTHORIZED BY THE
5 CLIENTS AND HAD CHECKS SENT TO AN ALTERED ADDRESS. HE
6 THEN RECEIVED THE UNAUTHORIZED ACCOUNT DISTRIBUTIONS. HE
7 FORGED THE NAME OF THE CLIENTS ON THEM, AND THEN DEPOSITED
8 THOSE INTO A BANK ACCOUNT. HE THEN MANIPULATED AFTER THE
9 FACT THE CLIENTS' ACCOUNTS STATEMENTS TO CONCEAL THE
10 WITHDRAWALS THAT HE MADE.

11 THE COX CASE, THE THIRD CASE --

12 THE COURT: HOW DOES WHAT YOU JUST DESCRIBED
13 DIFFER IN ANY SIGNIFICANT DEGREE FROM WHAT MR. SAYNE DID?

14 MR. BLACKWELL: WELL, YOUR HONOR, I THINK THE
15 BIG DIFFERENCE IS, IS THAT IN ERWIN WE HAD INVOLVED A MAN
16 WHO WAS THE MANAGER OF A SECURITIES FIRM, WHO WAS
17 OBVIOUSLY IN A FIDUCIARY RESPONSIBILITY AND A POSITION OF
18 TRUST -- MUCH MORE SO THAN MR. SAYNE WAS WITH FIRST
19 DATA -- WITH HIS CUSTOMERS, AND HE USED THE CUSTOMERS'
20 INFORMATION TO MAKE MONEY ON HIS OWN. I THINK THAT'S WHAT
21 THE DIFFERENCE IS, YOUR HONOR.

22 AND I THINK THE SAME THING APPLIES IN THE COX
23 CASE, THE THIRD CASE THAT MS. SMITH INCLUDED. THAT IS
24 EVEN MORE EGREGIOUS BECAUSE IN THAT CASE THE DEFENDANT
25 USED, SET UP A CHARITABLE FOUNDATION AND THEN MANIPULATED

1 MONEY THROUGH THAT CHARITABLE FOUNDATION AND TRUST
2 ACCOUNT, CAUSED DEPOSITORS TO DEPOSIT INTO THE CHARITABLE
3 FOUNDATION MAKING THEM BELIEVE THAT THE FOUNDATION WAS
4 SOMETHING THEY SHOULD CONTRIBUTE TO. THEN HE SET UP BANK
5 ACCOUNTS SO THE MONEY WOULD BE FUNNELED INDIRECTLY
6 ULTIMATELY TO HIM, AND THEN HE DISAPPEARED FOR FOUR YEARS
7 AFTER HE ACQUIRED HIS CLIENTS' MONEY.

8 I THINK IT'S IMPORTANT, YOUR HONOR, TO LOOK AT
9 WHAT MR. SAYNE DID IN COMPARISON TO THOSE CASES; BUT,
10 FIRST, I'D LIKE TO POINT OUT SOMETHING MS. SMITH BROUGHT
11 UP, AND THAT IS WHAT SHE SAID WAS LOOKING AT THE SCHEME
12 AND LOOKING AT THE PROBATION VIOLATION TOGETHER. WHAT THE
13 COURT HAS TO DO, I THINK, IS LOOK AT THE PROBATION
14 VIOLATION ITSELF. COUNT 1 CHARGES THAT THAT OCCURRED
15 BETWEEN MARCH 3 OF 2008 AND JANUARY 20 OF 2009. THAT'S
16 THE DATE, OF COURSE, THAT MR. SAYNE WAS ARRESTED; AND AS I
17 UNDERSTOOD THE TESTIMONY FROM MR. THORNTON, IT INVOLVED
18 THE SUBMISSION OF FALSE MONTHLY REPORTS AND THE
19 INFORMATION TO CONCEAL THE OPERATION OF PERFECTION AUTO
20 DETAILING.

21 IF THE COURT LOOKING AT THE SECOND COUNT IN THE
22 INDICTMENT, THAT'S THE COUNT INVOLVING THE SCHEME
23 INVOLVING FIRST DATA, IT BEGAN ON DECEMBER 3 OF 2008, SO
24 IT BEGAN TOWARD THE END OF THE SCHEME WITH THE PROBATION
25 OFFICE AND ONLY INVOLVED THE JANUARY 2010 {SIC} FALSE

1 INFORMATION THAT WAS PROVIDED TO MR. THORNTON. MY POINT
2 IS, YOUR HONOR, YOU CAN'T LAY THEM ON TOP OF EACH OTHER
3 AND SAY THEY OCCURRED AT THE SAME TIME OR ONE WAS THE
4 TOTAL CONCEALMENT OF THE OTHER.

5 I THINK THE OTHER THING THE COURT HAS TO LOOK
6 AT IS MR. SAYNE'S SCHEME; AND, AGAIN, YOUR HONOR, HE HAS
7 PLED GUILTY. HE HAS ADMITTED HIS RESPONSIBILITY. HE
8 ADMITS DOING WHAT MR. THORNTON SAID HE DID. HE ADMITS
9 WHAT AGENT SCOWN SAID HE DID; AND IF YOUR HONOR WOULD
10 REMEMBER THE TESTIMONY AND THE PRESENTENCE REPORT, MR.
11 SAYNE LEGALLY OBTAINED THE FIRST DATA TERMINAL. HE
12 LEGALLY OBTAINED THE PERFECTION AUTO DETAILING I.D.
13 BASICALLY WHAT HE DID, AND I SET OUT A VERY SIMPLE EXAMPLE
14 IN THE SENTENCING MEMORANDUM, HE WOULD SIMPLY TAKE THE
15 FIRST DATA NUMBER PERFECTION HAD RECEIVED, AND HE WOULD GO
16 UP ONE NUMBER; AND IF THAT HIT IN ANOTHER MERCHANT, THEN
17 YOU HAD A SERIES OF DEBIT AND CREDIT TRANSACTIONS, AND
18 THAT MONEY WAS THEN SENT TO MR. SAYNE'S ACCOUNT. THAT'S
19 SIMPLY WHAT HE DID. WHAT HE DID, YOUR HONOR, IS THE CARDS
20 THAT WERE USED WAS SIMPLY THE STORAGE MECHANISM FOR THE
21 MONEY HE STOLE TO GO INTO; AND ALL OF THOSE CARDS, YOUR
22 HONOR, AS MR. SCOWN TESTIFIED, WERE IN HIS OWN NAME. HE
23 DIDN'T CONCEAL THE FACT THAT THE MONEY WAS GOING TO HIM.
24 THEY WERE REASONABLY TRACEABLE TO HIM.

25 THE COURT: THE PRESENTENCE REPORT INDICATES

1 SOME OF THEM WERE NOT IN HIS NAME.

2 MR. BLACKWELL: THEY WERE IN HIS NAME OR
3 PERFECTION AUTO DETAIL.

4 THE COURT: OR HIS GRANDMOTHER.

5 MR. BLACKWELL: OR HIS GRANDMOTHER, BUT THEY
6 WERE TRACEABLE DIRECTLY BACK TO HIM.

7 AS THE COURT KNOWS, IN 2003, HIS GRANDMOTHER'S
8 NAME CAME UP IN THE 2003 CASE TOO, AND AGENT SCOWN
9 TESTIFIED THAT IT WOULD HAVE BEEN EASILY TRACEABLE BACK TO
10 MR. SAYNE. I HAVE SUGGESTED TO YOUR HONOR, AND MAY ARGUE
11 LATER WHAT I THINK THE MOTIVATION FOR WHAT MR. SAYNE DID
12 WAS, BUT CLEARLY THIS IS NOT CONCEALMENT; AND THE
13 PROBATION OFFICE CONSIDERED THIS SAME INFORMATION, YOUR
14 HONOR, AND DID NOT RECOMMEND THIS ENHANCEMENT IN THE
15 PRESENTENCE REPORT, ALTHOUGH ULTIMATELY, YOUR HONOR, IT'S
16 THE GOVERNMENT'S RESPONSIBILITY TO DO THAT AND YOUR HONOR
17 TO MAKE THAT DETERMINATION.

18 I SUGGEST TO THE COURT THAT UNDER THE FACTS AND
19 CIRCUMSTANCES AS YOU'VE HEARD TODAY, THAT IT'S NOT
20 APPROPRIATE IN THIS CASE.

21 THE COURT: ALL RIGHT, MR. BLACKWELL. THE
22 GOVERNMENT OBJECTS TO THE CALCULATION OF THE GUIDELINE
23 RANGE IN THE PRESENTENCE REPORT, ARGUES THAT MR. SAYNE'S
24 OFFENSE LEVEL SHOULD BE INCREASED BY TWO LEVELS. BASED ON
25 THE ENHANCEMENT PROVIDED FOR IN SECTION 2B1.19C WHICH

1 PROVIDES FOR THAT ENHANCEMENT IF THE OFFENSE INVOLVED
2 SOPHISTICATED MEANS. THE COMMENTARY TO THE GUIDELINES
3 DEFINES SOPHISTICATED MEANS AS ESPECIALLY COMPLEX OR
4 ESPECIALLY INTRICATE OFFENSE CONDUCT PERTAINING TO THE
5 EXECUTION OR CONCEALMENT OF AN OFFENSE. FOR EXAMPLE, IN A
6 TELEMARKETING SCHEME LOCATING THE MAIN OFFICE OF THE
7 SCHEME IN ONE JURISDICTION BUT LOCATING SOLICITING
8 OPERATIONS IN ANOTHER JURISDICTION ORDINARILY INDICATES
9 SOPHISTICATED MEANS. CONDUCT SUCH AS HIDING ASSETS OR
10 TRANSACTIONS OR BOTH THROUGH THE USE OF FICTITIOUS OFFICE
11 SHELLS OR OFF-SHORE FINANCIAL ACCOUNTS ALSO ORDINARILY
12 INDICATES SOPHISTICATED MEANS.

13 AS IS OFTEN THE CASE WITH THE GUIDELINES,
14 COMMENTARY IS NOT PARTICULARLY HELPFUL, EXCEPT TO THE
15 EXTENT THAT IT DOES INDICATE THAT SOPHISTICATED MEANS
16 INCLUDES NOT ONLY CONDUCT RELATED TO THE EXECUTION OF THE
17 OFFENSE ITSELF, BUT ALSO TO THE CONCEALMENT OF THE
18 OFFENSE. THERE IS NOT A GREAT NUMBER OF, OR THE COURT HAS
19 NOT FOUND A GREAT NUMBER OF REPORTED OR UNREPORTED CASES
20 WHICH EXPLAIN THE CRITERIA FOR THE APPLICATION OF THE
21 ENHANCEMENT. THE COURT HAS NOT FOUND, NOR HAS THE
22 GOVERNMENT POINTED TO A CASE THAT IS FACTUALLY ON ALL
23 FOURES WITH THE PRESENT CASE; HOWEVER, THE CASE LAW DOES
24 GIVE THE COURT SOME GUIDANCE IN HOW TO APPLY THE
25 ENHANCEMENT, AND IT IS CLEAR NOT ONLY FROM CASES IN OTHER

1 CIRCUITS, BUT FROM CASES IN THE SIXTH CIRCUIT AS WELL,
2 THAT THE TEST HERE IS NOT WHETHER OR NOT ANY SPECIFIC PART
3 OF THE SCHEME IS SOPHISTICATED, BUT RATHER WHETHER THE
4 SCHEME AS A WHOLE IS SOPHISTICATED OR COMPLEX OR
5 INTRICATE. AND THE CASE LAW MAKES CLEAR THAT IT IS NOT AN
6 EXAMINATION OF EACH OF THE INDIVIDUAL PARTS OF THE SCHEME
7 WHICH IS DETERMINATIVE, BUT RATHER THE OVERALL SCOPE OF
8 THE SCHEME.

9 THE SCHEME HERE IS APPARENTLY ONE THAT HAD NOT
10 BEEN USED BEFORE. INTERESTINGLY, WHEN I READ THE NAME
11 ASSIGNED TO THIS SCHEME IN THE PRESENTENCE REPORT, I
12 WRONGLY ASSUMED THAT THIS WAS A WELL KNOWN SCHEME THAT MR.
13 SAYNE HAD ADOPTED. THAT, HOWEVER, IS NOT THE CASE. THIS
14 IS A SCHEME THAT HE CONCEIVED AND EXECUTED; THAT AS FAR AS
15 THE FBI AGENT IN THIS CASE KNOWS WAS NOT USED BY ANY OTHER
16 PERPETRATOR. WHILE NOT ENTIRELY ANALOGOUS TO A TELE-
17 MARKETING SCHEME AS REFERENCED IN THE COMMENTARY, IT DOES
18 HAVE SOME SIMILARITIES. MR. SAYNE, MR. SAYNE'S SCHEME
19 INVOLVED AT LEAST TWO SEPARATE JURISDICTIONS, THAT BEING
20 HAVING LOCATED PRECISION DETAILING IN THE EASTERN DISTRICT
21 OF TENNESSEE AND THE EFFECTIVE VICTIM BEING LOCATED IN THE
22 STATE OF FLORIDA.

23 MORE IMPORTANTLY, HOWEVER, IS THAT THIS SCHEME
24 WAS AND DOES REPRESENT AN INTENTIONAL MANIPULATION BY MR.
25 SAYNE OF COMPUTER DATA AND COMPUTER SYSTEMS. THE SCHEME

1 INVOLVED MORE THAN 100 TRANSACTIONS INVOLVING
2 APPROXIMATELY 45 EMULATED VENDORS. THE SCHEME WAS CARRIED
3 OUT OVER A SIX WEEK PERIOD AND INVOLVED MORE THAN \$100,000
4 IN TRANSACTIONS. IT SEEMS TO ME, HOWEVER, THAT THE REAL
5 KEY TO WHETHER OR NOT THE ENHANCEMENT APPLIES IS FOUND IN
6 THE MANNER IN WHICH MR. SAYNE CONCEALED HIS CRIMINAL
7 CONDUCT, AND THAT HAS TO DO WITH THE FACT THAT THESE
8 ACCOUNTS HAD TO BE ZEROED OUT WITHIN ANY GIVEN 24 HOUR
9 PERIOD. IN OTHER WORDS, THERE HAD TO BE A CORRESPONDING
10 CREDIT FOR ANY DEBIT WITHIN A 24 HOUR PERIOD. THAT MEANS
11 THAT MR. SAYNE HAD TO MONITOR THESE ACCOUNTS CAREFULLY.
12 HE HAD TO MANIPULATE THE DATA TO ASSURE THAT THERE WAS IN
13 FACT A CORRESPONDING CREDIT, AND ALL OF THAT WAS CRITICAL
14 TO AVOIDING DETECTION BY MR. SAYNE.

15 BASED ON THE PREPONDERANCE OF THE EVIDENCE
16 STANDARD THAT IS APPLIED IN DETERMINING THESE OBJECTIONS,
17 OR THIS OBJECTION, I FIND BY A PREPONDERANCE OF THE
18 EVIDENCE THAT THE GOVERNMENT HAS ESTABLISHED THAT THE
19 OFFENSE INVOLVED SOPHISTICATED MEANS, AS I HAVE JUST
20 DESCRIBED.

21 IN ADDITION TO THAT -- AND I AT FIRST THOUGHT
22 THIS HAD NO SIGNIFICANCE TO THE ISSUE BEFORE THE COURT,
23 BUT IN ADDITION TO THAT IS THE ARGUMENT MADE BY THE
24 GOVERNMENT THAT THERE IS IN FACT A RELATIONSHIP BETWEEN
25 THE WIRE FRAUD SCHEME AND THE MONTHLY, THE FALSE MONTHLY

1 REPORTS SUBMITTED TO THE PROBATION OFFICER. MR. BLACKWELL
2 WAS CORRECT, THAT THERE IS NOT AN EXACT OVERLAP WITH
3 RESPECT TO THE TIME INVOLVED; HOWEVER, AS I UNDERSTAND THE
4 GOVERNMENT'S POINT, IT IS THAT THE FILING, OR CONTINUED
5 FILING OF FALSE MONTHLY REPORTS WAS ALSO CRITICAL TO MR.
6 SAYNE'S EFFORT TO AVOID DETECTION OF THE MAIL FRAUD
7 SCHEME. AND TO THE EXTENT THAT HE FALSELY ANSWERED
8 QUESTIONS ON THE MONTHLY REPORTS OR THAT HE GAVE FALSE
9 INFORMATION ON THOSE MONTHLY REPORTS, THE GOVERNMENT IS
10 CORRECT, IT IS SIMPLY ONE MORE PIECE OF THE PUZZLE THAT
11 WAS CREATED BY MR. SAYNE.

12 IN SUM, THIS WAS A MULTI-PART, MULTI-
13 JURISDICTION, INTENTIONAL MANIPULATION OF DATA AND SYSTEMS
14 WHICH REQUIRED A CONSIDERABLE AMOUNT OF EXPERTISE AND
15 WHICH REQUIRED CONSIDERABLE EFFORTS TO CONCEAL, AND UNDER
16 THE FACTS AND CIRCUMSTANCES OF THIS CASE, I FIND THAT THE
17 ENHANCEMENT APPLIES. THE GOVERNMENT'S OBJECTION IS
18 SUSTAINED. THAT RESULTS IN AN OFFENSE LEVEL OF, OR BASE
19 OFFENSE LEVEL OF 7 AND A SIX LEVEL ENHANCEMENT PURSUANT TO
20 SECTION 2B 1.1B1D BASED ON THE AMOUNT OF LOSS, THOSE TWO
21 CALCULATIONS ARE NOT OBJECTED TO, AND ALSO A TWO LEVEL
22 ENHANCEMENT UNDER SECTION 2B1.19C, RESULTING IN AN
23 ADJUSTED OFFENSE LEVEL OF 15. WITH A TWO LEVEL REDUCTION
24 FOR ACCEPTANCE OF RESPONSIBILITY, THAT RESULTS IN A TOTAL
25 OFFENSE LEVEL OF 13. WITH A CRIMINAL HISTORY CATEGORY OF

1 6, THAT RESULTS IN AN ADVISORY GUIDELINE SENTENCING RANGE
2 OF 33 TO 41 MONTHS. AND THAT IS THE ADVISORY RANGE THE
3 COURT WILL APPLY IN THE CASE.

4 AND, COUNSEL, BEFORE WE GO FURTHER, LET'S TAKE
5 ABOUT A 5 MINUTE RECESS, AND THEN WE'LL CONTINUE.

6 (RECESS AT 3:40 P.M., UNTIL 3:50 P.M.)

7 THE COURT: ALL RIGHT. MS. SMITH, WHAT IS THE
8 GOVERNMENT'S POSITION HERE WITH RESPECT TO THE CURRENT
9 INDICTMENT, CURRENT CASE?

10 MS. SMITH: I HAVE NOT CHANGED OUR POSITION
11 SINCE THE SENTENCING MEMORANDUM, YOUR HONOR, AND I THOUGHT
12 I ASKED THE COURT TO VARY UPWARDLY.

13 THE COURT: YOU DID.

14 MS. SMITH: AND I REALLY HAVE VERY LITTLE
15 ARGUMENT TO PRESENT; BUT WHATEVER IS IN THE SENTENCING
16 MEMORANDUM IS WHAT WE PROPOSE, AND, OF COURSE, WE CONCUR
17 WITH THE PROBATION OFFICER'S RECOMMENDATION AS TO THE
18 PROBATION VIOLATION AS WELL.

19 THE COURT: ALL RIGHT.

20 ALL RIGHT, MR. BLACKWELL, ON BEHALF OF MR.
21 SAYNE.

22 MS. SMITH: IS THIS MY ONLY OPPORTUNITY FOR
23 ARGUMENT, YOUR HONOR, BY THE WAY, OR DO I GET --

24 THE COURT: WHAT I THOUGHT I WOULD DO, I'LL GO
25 AHEAD AND IMPOSE SENTENCE ON THE CASE NUMBER 09-CR-96 AND

1 THEN WE'LL TAKE UP THE SUPERVISED RELEASE REVOCATION. I
2 ASSUME THERE'S GOING TO BE A STIPULATION ON THAT ONE.

3 MS. SMITH: OKAY. IN THAT INSTANCE, YOUR
4 HONOR, I PREPARED A TWO PAGE ORAL ARGUMENT, AND THEN THE
5 MORE I LOOKED AT IT, THE MORE I REALIZED THAT IT WAS JUST,
6 IT WAS JUST WAY TOO MUCH.

7 I THINK IN THIS INSTANCE IF WE JUST LOOK AT THE
8 NUMBERS, IT'S SOMEWHAT DEPRESSING FOR A PERSON OF MR.
9 SAYNE'S RELATIVE YOUTH, HE'S ONLY 33 YEARS OLD, HE NOW HAS
10 3 FEDERAL FELONY CONVICTIONS, I BELIEVE IT'S 9 STATE
11 FELONY CONVICTIONS, 8 STATE MISDEMEANOR CONVICTIONS AND A
12 TOTAL OF CRIMINAL HISTORY POINTS 26, WHICH IS DOUBLE WHAT
13 YOU NEED TO GET INTO THE VERY TOP CATEGORY.

14 AS TO CONVICTION FROM THIS CASE THAT WE'RE
15 DEALING WITH TODAY, HE SUBMITTED 11 FALSE MONTHLY REPORTS,
16 2 FALSE NET WORTH STATEMENTS, 23 FABRICATED EARNING
17 STATEMENTS, ENGAGED IN MORE THAN 100 FRAUDULENT CREDIT
18 CARD TRANSACTIONS, MANIPULATED MORE THAN \$300,000 IN
19 FRAUDULENT TRANSACTIONS AND VICTIMIZED 45 VENDORS WHOSE
20 NAMES WERE STOLEN. FOR ALL THE REASONS THAT ARE SET FORTH
21 IN OUR SENTENCING MEMORANDUM, I WOULD ASK THE COURT TO
22 MAXIMIZE HIS IMPRISONMENT AND MINIMIZE HIS SUPERVISION,
23 WHICH I KNOW MUST BE, MUST BE ORDERED PURSUANT TO THE LAW;
24 BUT HE WILL NOT SUCCEED ON SUPERVISION, AND WE'RE JUST
25 SETTING HIM UP FOR MORE FAILURE.

1 AND I GUESS FINALLY IN CLOSING, YOUR HONOR, I
2 GUESS THE THING THAT REALLY DISTURBS ME MOST OF ALL IS
3 THAT THE UNITED STATES PROBATION OFFICE IS SO DIFFERENT
4 FROM WHAT THE STATES CAN OFFER. THE RESOURCES THAT
5 OFFICER THORNTON COULD HAVE GIVEN MR. SAYNE, DRUG
6 TREATMENT, PSYCHO -- PSYCHOLOGICAL TREATMENT, EMOTIONAL
7 TREATMENT, ANY SORT OF THING, AND HE BASICALLY SNUBBED HIS
8 NOSE AT ALL OF THOSE FROM DAY ONE. THERE'S NO QUESTION
9 THAT HE'S A VERY INTELLIGENT MAN. THERE'S NO QUESTION
10 THAT HE ABSOLUTELY HAS NO GUILT ABOUT ANY OF THESE THINGS;
11 AND HE TOOK RESOURCES AWAY, NOT JUST FROM OFFICER
12 THORNTON, BUT FROM OTHER PEOPLE WHO WERE ON SUPERVISION
13 WHO DO IN FACT WANT TO REHABILITATE THEMSELVES, AND I DO
14 NOT UNDERSTAND THAT. I DON'T THINK HE CAN EXPLAIN THAT
15 EITHER. AND FOR ALL THOSE REASONS, YOUR HONOR, WE WOULD
16 ASK THE COURT TO MAXIMIZE THE TERM OF IMPRISONMENT AND TO
17 MINIMIZE THE TERM OF SUPERVISED RELEASE. THANK YOU.

18 THE COURT: ARE YOU SUGGESTING A VARIANCE ABOVE
19 THE TOP END OF THE GUIDELINES?

20 MS. SMITH: I BELIEVE I SUGGESTED 70 MONTHS ON
21 THE 2010, OR 2009 CONVICTION BASED ON UPWARD FOUR LEVELS,
22 AND THEN I ASKED FOR A LITTLE BIT MORE. I BELIEVE IT CAME
23 OUT TO 63 AT THE TOP IF, EVEN IF YOU WENT UP FOUR LEVELS,
24 YOUR HONOR. OF COURSE, WE'LL LEAVE IT AT THE COURT'S
25 DISCRETION. I ASKED ON PAGE 10 FOR THE COURT TO DEPART

1 UPWARDLY FOUR LEVELS TO AN OFFENSE LEVEL OF 17, WHICH
2 YIELDS AN ADVISORY RANGE OF 51 TO 63, AND THEN I ASKED FOR
3 70, YOUR HONOR.

4 MR. BLACKWELL: YOUR HONOR, IF I COULD START
5 WITH THE LAST THING. OBVIOUSLY IT'S OUR POSITION THAT A
6 FOUR LEVEL INCREASE UNDER 4A1.3 IS, IS EXTREME. I WOULD
7 AGREE WITH MS. SMITH THAT THE NUMBER OF CRIMINAL HISTORY
8 POINTS THAT MR. SAYNE HAS FOR A MAN HIS AGE IS OBVIOUSLY
9 MORE THAN IT SHOULD BE AND EXCEEDS THAT FOR A CRIMINAL
10 HISTORY CATEGORY OF 6; BUT 4A1.3, YOUR HONOR, TELLS US NOT
11 TO LOOK AT THE NUMBERS NECESSARILY, BUT INSTEAD TO LOOK AT
12 THE NATURE OF THE CONVICTIONS; AND I WOULD SUGGEST TO THE
13 COURT THAT A FAIR AMOUNT, A LITTLE OVER A DOZEN OF HIS
14 CRIMINAL HISTORY POINTS IN THE BEGINNING PRIOR TO HIS 2003
15 CONVICTION AND GUILTY PLEA IN THIS COURT, HAD TO DO WITH
16 PETTY THEFT AND WORTHLESS CHECK CHARGES. THEY WERE ALL
17 MISDEMEANOR CHARGES, YOUR HONOR.

18 OBVIOUSLY THE 2003 CONVICTION IS DIFFERENT.
19 THAT ADDED A NUMBER OF POINTS TO HIS CRIMINAL HISTORY; BUT
20 I THINK IF THE COURT LOOKS AFTER THE 2003 CONVICTION, YOU
21 WILL SEE THAT A NUMBER OF THE STATE CHARGES, PREDOMINANTLY
22 THE STATE CHARGES THAT WERE MISDEMEANORS, I BELIEVE THERE
23 MAY HAVE BEEN A STATE FELONY THERE, BUT ALL OF THOSE
24 CHARGES, YOUR HONOR, WERE RESOLVED BY GUILTY PLEAS, AND
25 BASICALLY ALL THE SENTENCES WERE RUN CONCURRENTLY TO THE

1 2003 FEDERAL SENTENCE. IN FACT, AS THE COURT KNOWS FROM
2 THE PRESENTENCE REPORT, WHEN MR. SAYNE WAS RELEASED ON
3 SUPERVISION, HE HAD NO OTHER ACTIVE STATE TIME TO SERVE,
4 AND I WOULD SIMPLY SUGGEST THAT LOOKING AT THE CRIMINAL
5 HISTORY POINTS GIVES THE COURT A DISTORTION AS TO THE
6 NATURE OF THE CONVICTIONS BEFORE THE CONVICTION IN THIS
7 CASE THAT MR. SAYNE HAS.

8 OBVIOUSLY, YOUR HONOR, IF THE COURT DECIDES
9 THAT A THREE LEVEL OR A FOUR LEVEL INCREASE IS GOING TO BE
10 CONSIDERED AS A RESULT OF HIS CRIMINAL HISTORY UNDER
11 4A1.3, I WOULD SUGGEST TO THE COURT THAT UNDER 3E1.1B
12 EITHER A THREE LEVEL OR FOUR LEVEL WOULD GIVE MR. SAYNE AN
13 OFFENSE LEVEL OF 16 OR 17, WHICH WOULD ALLOW HIM TO
14 RECEIVE A ONE LEVEL REDUCTION, THE EXTRA ACCEPTANCE OF
15 RESPONSIBILITY.

16 AS THE COURT KNOWS, HE STARTED COOPERATING
17 SHORTLY AFTER HE WAS ARRESTED; AND I WAS APPOINTED TO
18 REPRESENT HIM, THAT'S WHAT HE TOLD ME HE WANTED TO DO.
19 EVEN THOUGH HE WAS INDICTED LATER IN THE YEAR, WE WORKED
20 WITH THE GOVERNMENT ON BASICALLY 90 PERCENT OF THE FACTUAL
21 BASIS THAT YOUR HONOR HAS TO SUPPORT HIS GUILTY PLEA IN
22 THIS CASE.

23 I'M NOT GOING TO REPEAT ANYTHING, YOUR HONOR,
24 THAT I SAID IN MY SENTENCING MEMORANDUM, BUT WHAT I WOULD
25 LIKE TO DO IS EMPHASIZE WHAT I BELIEVE THE GOVERNMENT DID

1 NOT SAY IN THEIRS THAT THEY SHOULD HAVE SAID, AND I THINK
2 THAT'S IMPORTANT BECAUSE I THINK THE GOVERNMENT PAINTS TOO
3 ONE-SIDED A PICTURE. AND I UNDERSTAND, YOUR HONOR, THAT
4 HAD THIS BEEN 2003, THAT'S REALLY ALL THE COURT COULD
5 CONSIDER BECAUSE WHEN MR. SAYNE WAS SENTENCED BACK IN
6 2003, THE GUIDELINES WERE MANDATORY. BACK THEN THIS COURT
7 COULD NOT HAVE CONSIDERED ANY FAMILY CIRCUMSTANCES OR
8 SITUATION, COULD NOT HAVE CONSIDERED ANY PSYCHOLOGICAL
9 ISSUES THAT MR. SAYNE MIGHT HAVE HAD. AND I WOULD REMIND
10 THE COURT BACK IN 2003 THAT THE MR. SAYNE THAT WAS
11 SENTENCED IN THAT COURT, HIS CONDUCT THEN IS MATERIALLY
12 DIFFERENT THAN HIS CONDUCT SINCE HE WAS ARRESTED IN THIS
13 COURT.

14 ONE THING, YOUR HONOR, I CAN'T GO BACK AND
15 CHANGE WHAT ROBERT SAYNE DID. HE, HE PLED GUILTY. WE
16 HAVE ACKNOWLEDGED FROM THE VERY BEGINNING THAT HE
17 COMMITTED THE CRIME IN COUNT 1 AND HE COMMITTED THE CRIME
18 IN COUNT 2; BUT BACK IN 2003, YOUR HONOR, THE ROBERT SAYNE
19 THAT WAS SENTENCED BY YOUR HONOR BACK THEN DID NOT RECEIVE
20 ANY ACCEPTANCE OF RESPONSIBILITY. HE GOT A TWO LEVEL
21 ENHANCEMENT BECAUSE OF OBSTRUCTION OF JUSTICE BECAUSE HE
22 ATTEMPTED TO WITHDRAW HIS GUILTY PLEA, AND YOU AT THE TIME
23 FOUND THAT HE HAD GIVEN FALSE TESTIMONY. HE HAD A
24 VIOLATION OF HIS PRETRIAL RELEASE BACK THEN. HE HAD A
25 CRIMINAL HISTORY OF 5 BACK IN 2003 BASED ON 12 POINTS; AND

1 AS THE PRESENTENCE REPORT REFLECTS, HE HAD AN ESCALATING
2 DRUG ABUSE PROBLEM THAT EXISTED BACK THEN.

3 AGAIN, YOUR HONOR, I'M NOT GOING TO TRY TO
4 EXPLAIN BECAUSE IT CAN'T BE EXPLAINED WHAT HE DID THAT
5 FORMED THE BASIS FOR COUNTS 1 AND 2 OF THIS INDICTMENT.
6 HE HAS ADMITTED DOING THE CONDUCT THAT HE WAS CHARGED WITH
7 IN A FAIRLY DETAILED FACTUAL BASIS IN THE PLEA AGREEMENT.
8 WHAT THE GOVERNMENT DOESN'T TALK ABOUT THOUGH IN THEIR
9 SENTENCING MEMORANDUM OR TODAY IS HIS CONDUCT AFTER HE WAS
10 ARRESTED, AND I SIMPLY AND VERY BRIEFLY WOULD LIKE TO GO
11 THROUGH THAT.

12 ON MARCH 6, YOUR HONOR, OF 2009, AFTER I WAS
13 APPOINTED TO REPRESENT HIM, MET HIM FOR THE FIRST TIME AT
14 THE WASHINGTON COUNTY JAIL, HE TOLD ME AT THE TIME THAT HE
15 WAS GUILTY, HE WANTED TO PLEAD GUILTY. HE FELT LIKE THERE
16 WAS SECURITY ISSUES THAT FIRST DATA OUGHT TO KNOW ABOUT,
17 HE WANTED TO SIT DOWN WITH THEM AND THE FBI AND EXPLAIN
18 WHAT HE HAD DONE AND WHAT HE HAD LEARNED ABOUT THEIR
19 SYSTEM; AND MOST IMPORTANTLY, YOUR HONOR, HE TOLD ME, AND
20 I PUT THIS IN QUOTES IN MY SENTENCING MEMORANDUM, I AM NOT
21 NORMAL. THERE MUST BE SOMETHING WRONG WITH ME. I'VE
22 NEVER BEEN A SUCCESS AT ANYTHING. HE TOLD ME THAT HE WAS
23 SORRY FOR THE TROUBLE AND THE CONCERN HE HAD CAUSED HIS
24 FAMILY, PARTICULARLY HIS GREAT GRANDMOTHER WHO HAD BEEN
25 SUPPORTIVE ALL THESE YEARS. HE TOLD ME THAT HE WANTED TO

1 MEET WITH THE FBI AND HE WANTED TO TELL THEM EVERYTHING
2 THAT HE KNEW AND HE WANTED TO ANSWER THEIR QUESTIONS.

3 THAT FIRST INTERVIEW OCCURRED ON MARCH 31 OF
4 2009. IT LASTED OVER TWO HOURS. MR. SAYNE VOLUNTEERED
5 INFORMATION. HE ANSWERED ALL OF THE AGENT'S QUESTIONS.
6 THE AGENT TOLD ME LATER THAT HE FELT MR. SAYNE HAD BEEN
7 TRUTHFUL, THAT HE HAD BEEN COMPLETE, AND MOST IMPORTANTLY
8 THE INFORMATION THAT MR. SAYNE HAD GIVEN HIM HE BELIEVED
9 WOULD BE VERY HELPFUL TO FIRST DATA IN STRENGTHENING THEIR
10 SECURITY.

11 WE THEN KEPT ASKING FOR A FOLLOW-UP INTERVIEW,
12 AND THE AGENT AT THE TIME, YOUR HONOR, WAS BUSY, HE WAS
13 OUT OF THE OFFICE FOR THE NEXT COUPLE MONTHS, AND IT
14 WASN'T UNTIL JUNE 29 OF 2009 THAT WE WERE ABLE TO SET UP
15 THE SECOND INTERVIEW. AGAIN, MR. SAYNE WAS INSISTING ON
16 THAT INTERVIEW. WE MET AT THE U.S. ATTORNEY'S OFFICE, THE
17 FBI WAS INVOLVED; AND, AGAIN, WE WENT BACK THROUGH THE
18 DETAIL OF WHAT HAD HAPPENED, TALKED ABOUT THE SECURITY
19 WEAKNESSES THAT MR. SAYNE HAD SEEN THAT HE HAD NOT TAKEN
20 ADVANTAGE OF. HE WANTED TO SUPPLY THAT INFORMATION. YOUR
21 HONOR HEARD THE TESTIMONY FROM AGENT SCOWN THAT THEY
22 APPRECIATED THE INFORMATION THAT MR. SAYNE GAVE THEM, AND
23 THEY THEN REPORTED THAT INFORMATION TO FIRST DATA SO FIRST
24 DATA COULD CHANGE THEIR SECURITY PROCEDURES.

25 YOUR HONOR HAS READ MR. SAYNE'S OWN LETTER, I'M

1 NOT GOING TO GO BACK AND TALK ABOUT WHAT HE SAID; BUT IT
2 SEEMED TO ME, YOUR HONOR, BASED ON MY CONVERSATIONS WITH
3 HIM AND THE NUMBER OF VISITS I HAD WITH HIM, WHEN I READ
4 THAT LETTER, IT SEEMED TO ME TO BE A MAN WHO RECOGNIZED
5 HIS SHORTCOMINGS, WHO RECOGNIZED THAT HE PUT PEOPLE AT
6 RISK, WHO RECOGNIZED THAT HE HAD HURT PEOPLE AND HE WAS
7 SORRY FOR WHAT HE DID.

8 LOOK AT WHAT HE DID, YOUR HONOR, AS FAR AS
9 CORRECTIONS WERE CONCERNED AND HIS COOPERATIONS WHILE HE'S
10 BEEN IN CUSTODY. WHEN HE WAS IN WASHINGTON COUNTY, YOUR
11 HONOR, HE WAS IN A CELL WITH A VIOLENT INMATE UP THERE,
12 AND HE WAS SMUGGLING IN DRUGS THROUGH THE KITCHEN AT THE
13 WASHINGTON COUNTY JAIL. MR. SAYNE, THOUGH REALIZING THAT
14 IF THAT DEFENDANT FOUND OUT THAT HE WAS TELLING WHAT
15 HAPPENED, HE COULD GET IN TROUBLE, HE PASSED THAT
16 INFORMATION ON TO CORRECTIONAL OFFICIALS AT THE WASHINGTON
17 COUNTY JAIL. AS A RESULT OF THAT, I ASKED THE MARSHALS
18 OFFICE TO MOVE MR. SAYNE FROM WASHINGTON COUNTY, TO GET
19 HIM OUT OF THERE SO THERE WOULDN'T BE ANY RETALIATION, AND
20 THE MARSHALS SERVICE DID THAT.

21 MR. SAYNE EVENTUALLY, YOUR HONOR, GOT PLACED
22 BACK IN WASHINGTON COUNTY, AND WE VERY QUICKLY HAD TO
23 MOVE, AND THE MARSHALS OFFICE AGAIN MOVED HIM WITHIN THE
24 WASHINGTON COUNTY JAIL TO GET HIM OUT OF HARM'S WAY
25 BECAUSE THAT VIOLENT DEFENDANT WAS STILL THERE.

1 HE'S BEEN IN THE CLAIBORNE COUNTY JAIL, YOUR
2 HONOR, FOR TWO DIFFERENT OCCASIONS NOW FOR SEVERAL MONTHS.
3 AS YOUR HONOR CAN TELL FROM THE SENTENCING MEMORANDUM, HE
4 HELPED THEM WITH A NUMBER OF BURGLARIES. THERE WAS A
5 SITUATION WHERE AN INMATE ACCUSED SOME GUARDS OF PHYSICAL
6 ABUSE TO THE INMATE, MR. SAYNE VOLUNTEERED INFORMATION TO
7 GIVE INFORMATION TO THE SHERIFF'S DEPARTMENT.

8 THE COURT: DOES THAT SUGGEST THAT HE HAS
9 REHABILITATED HIMSELF OR THAT HE'S LEARNED HOW TO PLAY THE
10 SYSTEM?

11 MR. BLACKWELL: YOUR HONOR, IT SUGGESTS TO ME,
12 IT SUGGESTS TO ME IN GETTING TO KNOW HIM THAT IT'S SOMEONE
13 WHO IS REALIZING THAT HE HAS RESPONSIBILITIES TO OBEY THE
14 LAW THAT MAYBE HE DIDN'T HAVE BEFORE. IT'S CONDUCT, YOUR
15 HONOR, DIFFERENT FROM THE CONDUCT HE DISPLAYED BACK IN
16 2003, AND I SUBMIT TO THE COURT THAT IT SHOWS THAT EVEN
17 THOUGH THE GOVERNMENT PAINTS HIM AS SOMEONE WHO IS TOTALLY
18 INCORRIGIBLE, WHO IS ALWAYS GOING TO VIOLATE THE LAW, THAT
19 THERE ARE TIMES, PARTICULARLY RECENT TIMES, THAT HE TRIES
20 TO DO THE RIGHT THING.

21 YOUR HONOR, IN FACT, I GOT A LETTER THAT I HAVE
22 PROVIDED THE GOVERNMENT THAT I WOULD LIKE TO PROVIDE TO
23 THE COURT AND ASK THAT IT BE INCLUDED AS AN EXHIBIT --

24 THE COURT: ALL RIGHT.

25 MR. BLACKWELL: -- FROM A CAPTAIN AT THE

1 CLAIBORNE COUNTY SHERIFF'S DEPARTMENT, AND HE VALIDATES
2 COOPERATION AND THE HELP THAT MR. SAYNE HAS GIVEN THEM
3 SINCE HE'S BEEN THERE.

4 AND IN ADDITION, YOUR HONOR, YOU HAVE TO
5 CONSIDER THIS NOW AGAINST HIS BACKGROUND; AND THE
6 GOVERNMENT DOESN'T TALK ANYTHING ABOUT HIS BACKGROUND,
7 EXCEPT TO THE POINT THAT THEY TALK ABOUT WHEN WE WERE HERE
8 BEFORE TALKING ABOUT GETTING HIM TREATMENT. THEY TALK
9 ABOUT SOMEONE WHO STOOD IN HIS STEAD AS HIS MOTHER, AND
10 THEY SEEMED TO SUGGEST, YOUR HONOR, THAT THAT'S NOT
11 SOMETHING THAT WOULD HAVE BEEN APPROPRIATE AT THE TIME;
12 BUT YOUR HONOR HAS TO LOOK AT MR. SAYNE'S BACKGROUND. THE
13 FACT THAT HIS MOTHER WAS ABSENT MOST OF THE TIME. WHEN
14 SHE WAS AROUND, SHE WAS ABUSIVE, SHE WAS A DRUG USER, SHE
15 WAS A CON. SHE GOT INVOLVED IN ECONOMIC AND FINANCIAL
16 CRIMES HERSELF. HE DIDN'T HAVE A FATHER GROWING UP. HE
17 HAS A CONFLICTING FAMILY BACKGROUND. ON ONE HAND, YOUR
18 HONOR, HE HAS GRANDPARENTS WHO CARED FOR HIM, WHO LOVED
19 HIM, WHO HELPED HIM ALONG. ON THE OTHER HAND HE HAD A
20 GRANDPARENT WHO DID THINGS THAT A ROLE MODEL SHOULDN'T DO
21 FOR A YOUNG MAN GROWING UP.

22 HIS CRIMINAL HISTORY, YOUR HONOR, IS, AGAIN, AS
23 I SAID BEFORE, PRE-2003, IT'S PETTY THEFT AND WORTHLESS
24 CHECKS. POST 2003 HE GETS 13 POINTS ADDED BECAUSE OF
25 STATE CONVICTIONS THAT HE PLED GUILTY TO THAT WERE RUN

1 CONCURRENTLY WITH HIS FEDERAL SENTENCE IN 2003.

2 ONE THING HE TOLD ME, YOUR HONOR, WHEN I MET
3 WITH HIM WAS THAT HE WANTED A, A PSYCHOLOGICAL EVALUATION,
4 AND WE APPLIED TO THE COURT FOR THAT. THE COURT AGREED.
5 MR. SAYNE WANTED THAT. THAT WAS NOT AN IDEA, YOUR HONOR,
6 THAT I CAME UP. THE COURT CONSIDERED IT, THE COURT
7 ORDERED IT. THE EVALUATION WAS DONE BY DR. MCNISH. IT
8 INCLUDED CLINICAL INTERVIEWS, IT INCLUDED A PSYCHOLOGICAL
9 TEST; AND THERE'S SOME THINGS I CAN AGREE WITH MS. SMITH
10 ON, I THINK THIS EVALUATION IN SOME PARTS SHOWS THAT MR.
11 SAYNE IS A SMART PERSON; THAT HE HAS A LOT OF POTENTIAL;
12 THAT HIS POTENTIAL HASN'T BEEN DIRECTED IN THE RIGHT
13 DIRECTION OVER THE YEARS. I THINK IT'S ALSO IMPORTANT TO
14 NOTE THAT DR. MCNISH SAYS THAT MR. SAYNE TRIED DURING THE
15 EVALUATION; THAT SHE FOUND THAT HIS REPORTING WAS HONEST;
16 THAT THERE WAS NO EXAGGERATION OR FEIGNING ON HIS PART;
17 THAT IT WAS AN HONEST ATTEMPT FOR HELP. AND, YOUR HONOR,
18 I CONTRAST THAT TO WHAT THE COURT DESCRIBED MR. SAYNE WHEN
19 HE PLED GUILTY. WHEN WE ASKED FOR THAT EVALUATION, THE
20 GOVERNMENT SAID THAT HE WAS A PATHOLOGICAL LIAR; THAT HE
21 WAS TRYING TO CON THE COURT BY SIMPLY HAVING A
22 PSYCHOLOGICAL EVALUATION.

23 WELL, THANKFULLY DR. MCNISH BELIEVED AND SAW
24 THAT MR. SAYNE HONESTLY REPORTED AND HONESTLY PARTICIPATED
25 IN THE PROCESS. HIS DIAGNOSES WAS TWO PERSONALITY

1 DISORDERS, AND THAT SHE SAID THAT THEY WERE BASICALLY
2 BASED ON INTENSE ABANDONMENT FEARS. YOUR HONOR, AS A
3 RESULT OF THAT, SHE RECOMMENDED COGNITIVE BEHAVIORAL
4 THERAPY. I DID NOTE IN THE REPORT THAT IN MAKING THAT
5 RECOMMENDATION SHE DIDN'T EXPLAIN TO THE COURT OR TO THE
6 PARTIES WHAT COGNITIVE BEHAVIORAL THERAPY WAS; AND I
7 ATTEMPTED IN THE SENTENCING MEMORANDUM, YOUR HONOR, TO
8 RESEARCH THAT, TO GET INTO IT, TO SEE WHAT IT INVOLVED AND
9 TO SEE WHAT HELPED. ONLY MR. SAYNE IS GOING TO BE ABLE TO
10 TAKE ADVANTAGE OF THAT, BUT WE ASK THE COURT AS PART OF
11 THE SENTENCING PROCESS TO TAKE THAT INTO CONSIDERATION, TO
12 INCLUDE THAT BOTH WHILE HE IS IN CUSTODY AND WHEN HE IS
13 RELEASED ON SUPERVISED RELEASE.

14 I ALSO BELIEVE, YOUR HONOR, THAT WE HAVE
15 ESTABLISHED THAT MR. SAYNE HAS A DRUG PROBLEM; THAT WHEN
16 HIS BUSINESS FAILED, HE RESORTED BACK TO THE DRUG ABUSE
17 CONDUCT THAT HE DID BEFORE; THAT HE BEGAN USING VALIUM AND
18 AGAIN GOT OUT OF CONTROL. NOT SAYING THAT, YOUR HONOR, AS
19 ANY KIND OF EXCUSE FOR ANYTHING, BUT IT'S PART OF HIS NEED
20 IN NEEDING HELP THAT HE NEEDS THE 500 HOUR COMPREHENSIVE
21 RESIDENTIAL DRUG TREATMENT PROGRAM. HE HAS NOT HAD THAT
22 BEFORE, AND WE ASK THE COURT TO MAKE THAT RECOMMENDATION
23 SO HE CAN GET THAT NOW.

24 THAT'S OUR POSITION, YOUR HONOR. OBVIOUSLY MR.
25 SAYNE WANTS TO ADDRESS THE COURT. I'M MORE THAN HAPPY TO

1 ANSWER ANY QUESTIONS THE COURT MIGHT HAVE OF ME.

2 THE COURT: WELL, LET ME JUST ASK ONE, MR.
3 BLACKWELL, AND I ADDRESSED IT TO AGENT SCOWN EARLIER, IS
4 THERE ANYTHING TO ESTABLISH THAT THIS BUSINESS ACTUALLY
5 EXISTED AS A, AS A LEGITIMATE BUSINESS? WHAT IS THERE?
6 AT THIS POINT I'M, I'M WONDERING WHETHER THERE WAS EVER A
7 LEGITIMATE ATTEMPT TO OPERATE, OPEN AND OPERATE A
8 BUSINESS.

9 MR. BLACKWELL: WELL, YOUR HONOR, I, IN MY
10 TALKS WITH MR. SAYNE AND THE DISCOVERY I WAS PROVIDED, I
11 UNDERSTAND THAT THERE WAS A BUSINESS LOCATION THAT WAS
12 LEASED. THERE WAS A DEFINITE ADDRESS.

13 THE COURT: IS THERE A LEASE AGREEMENT --

14 MR. BLACKWELL: I BELIEVE THERE WAS, YOUR
15 HONOR.

16 THE COURT: -- DIRECTING PAYMENT IS? THERE A
17 RECORD OF PAYMENT OF THE LEASE, A RECORD OF PURCHASE OF
18 EQUIPMENT?

19 MR. BLACKWELL: WELL, YOUR HONOR, THERE WAS
20 NEVER AN ISSUE AS TO THE LEGITIMACY OF THAT BUSINESS
21 DURING ALL THE MEETINGS THAT WE HAD WITH THE FBI OR ANY
22 INTERVIEWS THEY CONDUCTED. AS YOUR HONOR CAN TELL FROM
23 THE FACTUAL BASIS THAT WE AGREED TO, WE AGREED THAT THE
24 BUSINESS ITSELF WAS A LEGITIMATE BUSINESS. IT WAS A
25 BUSINESS THAT WASN'T SUCCESSFUL, THAT WENT OUT OF

1 BUSINESS, AND THAT AFTER THAT IS WHEN MR. SAYNE GOT
2 INVOLVED IN MANIPULATING THE TERMINAL THAT HE RECEIVED
3 FROM FIRST DATA.

4 THERE WAS AN AGREEMENT WITH FIRST DATA. THEY
5 WERE THE ONES THAT PROVIDED THE TERMINAL TO HIM. THE
6 BUSINESS JUST DID NOT TAKE OFF BECAUSE A LOCAL DEALERSHIP
7 DECIDED THAT THEY WERE GOING TO KEEP THEIR DETAILING
8 IN-HOUSE INSTEAD OF DOING THAT WITH PERFECTION AUTO
9 DETAILING.

10 THE COURT: WELL, IS THAT THE ONLY CUSTOMER HE
11 HAD?

12 MR. BLACKWELL: NO, SIR. THERE WERE OTHER
13 CUSTOMERS, BUT NOT ENOUGH CUSTOMERS TO JUSTIFY CONTINUING
14 THE BUSINESS.

15 THE COURT: WHAT DOES ONE NEED ALL THESE
16 THOUSANDS OF DOLLARS FOR TO OPEN UP A DETAILING BUSINESS?

17 MR. BLACKWELL: WELL, YOUR HONOR, YOU'VE GOT TO
18 HAVE ADVERTISING FIRST, YOU'VE GOT TO HAVE A BUSINESS
19 LOCATION, YOU'VE GOT TO GET THE BUSINESS LICENSES, AS I
20 RECALL. IN A DETAILING BUSINESS, IT REQUIRES CERTAIN
21 MATERIALS THAT YOU USE. I MEAN, AGAIN, THE GOVERNMENT HAS
22 NEVER TAKEN THE POSITION, NOR AS I UNDERSTAND IT THE
23 PROBATION OFFICE IN THE PRESENTENCE REPORT, THAT THE
24 CREATION OF THIS BUSINESS WAS IN ANY WAY ILLEGITIMATE.
25 GRANTED, YOUR HONOR, THAT HE DIDN'T DISCLOSE IT TO THE

1 PROBATION OFFICE, WHICH HE SHOULD HAVE DONE, WHICH HE HAS
2 ADMITTED AND WHICH HE HAS PLED GUILTY TO.

3 THE COURT: MR. BLACKWELL, THE PROBLEM I'M
4 HAVING HERE IS THAT, AND I'M TRYING NOT TO PREJUDGE THIS,
5 BUT ON PAPER THE RECORD I'VE GOT IS A RECORD OF A
6 DEFENDANT WHO FOR THE LAST DECADE HAS BEEN WILLING TO LIE,
7 CHEAT, STEAL, TAKE ADVANTAGE OF PEOPLE, SCAM PEOPLE, AND
8 I'M NOW BEING TOLD THAT SUDDENLY HE HAS CHANGED. HE NOW
9 WANTS TO DO THE RIGHT THING. AND WHAT I THINK I'M HEARING
10 IS THAT ALL THIS CAN BE EXPLAINED BY A MOTHER WHO RAN OFF
11 AND ABANDONED HIM AND A BUSINESS THAT FAILED.

12 MR. BLACKWELL: NO, SIR.

13 THE COURT: AND I KNOW THAT'S AN OVER
14 SIMPLIFICATION, BUT THAT'S WHAT IT SOUNDS LIKE.

15 MR. BLACKWELL: WELL, AND IF THAT'S WHAT IT
16 SOUNDS LIKE, THAT'S NOT WHAT IT'S MEANT TO BE. I DON'T
17 KNOW HOW WE ARE ABLE TO EXPLAIN WHY PEOPLE DO WHAT THEY
18 DO, PARTICULARLY IN SITUATIONS WHERE YOU HAVE WHITE COLLAR
19 CRIMES. I AGREE WITH THE COURT THAT THIS IS SOMETHING
20 THAT MR. SAYNE DECIDED TO DO; BUT WHEN YOU DECIDE TO DO
21 SOMETHING, IT'S BASED ON EXPERIENCES AND, AND GROWTH AND
22 PEOPLE THAT YOU LOOK UP TO WHEN YOU DECIDE TO DO IT.
23 CLEARLY, YOUR HONOR, HE DID THE WRONG THINGS, AND HE HAS
24 ADMITTED TO EVERYONE THAT HE COMMITTED THESE CRIMES. IF
25 HE CAME IN HERE, YOUR HONOR, SAYING, JUDGE, IF YOU LET ME

1 OUT OR I DON'T CARE WHY I DID IT, THAT WOULD BE ONE THING;
2 BUT HE COMES IN HERE ASKING FOR HELP.

3 I'M NOT MINIMIZING WHAT HE'S DONE, AND I'M NOT
4 ARGUING WITH THE COURT AT ALL ABOUT THE SUMMARY THAT YOU
5 JUST GAVE. CLEARLY THOSE THINGS WERE THINGS THAT HAPPENED
6 IN THE PAST. I'M SIMPLY SUGGESTING TO THE COURT THAT
7 THERE ARE A NUMBER OF POSITIVE THINGS THAT MR. SAYNE HAS
8 DONE SINCE HE'S BEEN IN CUSTODY SINCE JANUARY OF 2009 THAT
9 THE COURT NEEDS TO TAKE INTO CONSIDERATION. IT WOULD BE A
10 SAD DAY, YOUR HONOR, REGARDLESS OF WHAT A PERSON'S PAST
11 HISTORY IS, IF WE DECIDE TO SIMPLY THROW AWAY A HUMAN LIFE
12 THAT MIGHT BE PRODUCTIVE.

13 THE COURT: AND I FULLY AGREE WITH THAT, AND
14 THAT'S THE REASON I'M STRUGGLING WITH THIS A BIT BECAUSE
15 CLEARLY WHAT YOU DESCRIBE IN TERMS OF THE COOPERATION HE'S
16 GIVEN AT THE WASHINGTON COUNTY DETENTION CENTER AND AT THE
17 CLAIBORNE COUNTY JAIL, THOSE ARE POSITIVE THINGS, IF IN
18 FACT THEY REPRESENT A SINCERE DESIRE ON HIS PART TO DO THE
19 RIGHT THING, IF THEY ARE INDICATIVE OF A DEGREE OF REMORSE
20 OR ACCEPTANCE OF RESPONSIBILITY THAT SUGGESTS THAT THERE
21 IS A POTENTIAL FOR REHABILITATION HERE.

22 ON THE OTHER HAND, THERE ARE JUST LITTLE THINGS
23 THAT ARE BOthersome HERE. I AM HAVING A DIFFICULT TIME
24 UNDERSTANDING WHY ALL THOSE THOUSANDS OF DOLLARS ARE
25 NEEDED TO START A DETAILING BUSINESS. I'M HAVING A

1 DIFFICULT TIME UNDERSTANDING THE SIGNIFICANCE OF THE
2 ARGUMENT THAT'S NOW BEING MADE THAT HE SUFFERS FROM
3 DEPRESSION WHEN HE DENIED DURING THE PSYCHOLOGICAL
4 EVALUATION THAT HE HAD ANY SYMPTOMS OF DEPRESSION. I'M
5 HAVING A DIFFICULT TIME UNDERSTANDING WHY IT'S ARGUED IN
6 THE SENTENCING MEMORANDUM THAT IN REALITY THIS WAS A
7 BUSINESS WHERE HE WORKED FOR SOMEBODY ELSE, AND YET HE
8 TOLD THE PROBATION OFFICER HE OWNED AND OPERATED THIS
9 BUSINESS. THOSE ARE BOTHERSOME LITTLE DETAILS.

10 MR. BLACKWELL: WELL, YOUR HONOR, AND I
11 UNDERSTAND THAT. IF I COULD ADDRESS ONE OF THEM, THE
12 COURT WILL REMEMBER FROM THE TESTIMONY YOU HEARD THAT THE
13 BUSINESS ITSELF STARTED IN AUGUST AND SEPTEMBER OF 2008.
14 IT LASTED A COUPLE MONTHS, AND THAT WAS THE END OF IT IT'S
15 OUR POSITION, AS I SET OUT IN THE SENTENCING MEMORANDUM,
16 THAT THAT'S WHEN THE DEPRESSION HIT. MR. SAYNE REALIZED
17 AGAIN THAT HE HAD BEEN A COMPLETE FAILURE, HE HADN'T BEEN
18 A SUCCESS AT ANYTHING. THAT'S WHEN WE SUGGEST TO THE
19 COURT THAT THE DEPRESSION STARTED AGAIN, AND HE STARTED
20 ABUSING VALIUM AT THE TIME.

21 THE COURT: BUT THIS EVALUATION WAS DONE AFTER
22 THAT.

23 MR. BLACKWELL: EXACTLY, YOUR HONOR; BUT THE
24 EVALUATION WAS DONE AFTER HE WENT INTO CUSTODY. I MEAN,
25 THE EVALUATION WAS DONE BACK A COUPLE OF MONTHS AGO AFTER

1 HE HAD BEEN IN CUSTODY A YEAR. HE HAS ADAPTED AS WELL AS
2 HE CAN ADAPT TO HIS CURRENT SITUATION. THE BUSINESS HAD
3 FAILED, YOUR HONOR, BACK AT THE END OF 2008.

4 I MEAN, YOU KNOW, DEPRESSION, MY UNDERSTANDING
5 OF DEPRESSION, AND, AGAIN, I DON'T WANT TO GET INTO
6 SOMETHING THAT I'M NOT AN EXPERT ON, BUT DEPRESSION IN MY
7 EXPERIENCE WITH IT IS NOT SOMETHING THAT IS AN OBVIOUS
8 CONSTANT. IT'S SOMETHING THAT COMES AND GOES WITH THE
9 CHANGE OF CIRCUMSTANCES; AND IT'S NOT SO MUCH THE
10 DEPRESSION THAT WE'RE CONCERNED ABOUT, I'M MORE CONCERNED
11 ABOUT THE DRUG ABUSE AND THE ADDICTIVE BEHAVIOR.

12 AND I AGREE WITH DR. MCNISH THAT THAT CREATES
13 CERTAIN PERSONALITY DEFICIENCIES AND PERSONALITY TRAITS.
14 I MEAN, SHE SAYS, AND I THINK IT WAS EVEN DIFFICULT FOR
15 HER IN THE PSYCHOLOGICAL EVALUATION TO REALLY PUT HER
16 FINGER ON THE ANSWER TO THE QUESTION YOUR HONOR JUST
17 ASKED, AND THAT'S THE WHY QUESTION, WHY DID MR. SAYNE DO
18 ALL OF THIS OVER THE LAST TEN YEARS OR SO? AND THE ONLY
19 THING THAT I GLEANED FROM WHAT SHE SAID IS IT IS A
20 CIRCUMSTANCE, A SERIES OF CIRCUMSTANCES AND A SERIES OF
21 BEHAVIORS ON HIS PART THAT AREN'T EASILY DEFINABLE INTO
22 ONE SINGLE FACTOR. THAT YOU HAVE TO TAKE INTO
23 CONSIDERATION HIS BACKGROUND AND EVERYTHING ELSE AND HIS
24 CURRENT SITUATION.

25 I KNOW THE COURT IS IN A DIFFICULT POSITION IN

1 TRYING TO DECIDE WHETHER THIS IS IT OR WHETHER IF THE
2 COURT SHOWS MERCY AND MR. SAYNE GETS BACK OUT IF IT'S
3 GOING TO HAPPEN AGAIN. I CAN ONLY SUGGEST TO THE COURT
4 THAT WE HAVE TRIED AS -- MR. SAYNE HAS TRIED AS BEST HE
5 CAN TO SHOW A DIFFERENCE IN HIS BEHAVIOR FROM LAST TIME
6 AND A DIFFERENCE IN HIS BEHAVIOR BY EVERYTHING HE'S DONE
7 SINCE HE'S BEEN IN ARREST.

8 YOUR HONOR, I'M NOT GOING TO TAKE ANY CREDIT
9 FOR THAT. I SIMPLY SPENT A LOT OF TIME WITH HIM, AND HE
10 TOLD ME FROM THE VERY BEGINNING THAT THIS WAS SOMETHING HE
11 WANTED TO DO; THAT HE DOESN'T WANT TO BE PART OF THIS
12 REVOLVING DOOR AND CONTINUE TO GET OUT, DISAPPOINT PEOPLE,
13 DISAPPOINT HIMSELF, DISAPPOINT YOUR HONOR AND END UP BACK
14 IN JAIL AGAIN. HE WANTS TO BE PRODUCTIVE, AND THANKFULLY
15 HE'S STILL YOUNG ENOUGH TO DO THAT.

16 YOU KNOW, I DON'T ENVY YOUR HONOR IN TRYING TO
17 RESOLVE THESE ISSUES. WE ARE SIMPLY HERE ASKING FOR HELP;
18 AND I BELIEVE, YOUR HONOR, THAT THE APPROPRIATE THERAPY
19 AND COUNSELING THAT CAN START WITH THE BUREAU OF PRISONS,
20 THE HELP THAT HE'S GOING TO GET IN UNDERSTANDING THE DRUG
21 AND ADDICTION PROBLEM THAT HE HAS, YOUR HONOR, IS
22 SOMETHING THAT HE NEEDS HELP FOR, AND WE WOULD ASK THE
23 COURT TO RECOMMEND THE 500 HOUR COMPREHENSIVE DRUG
24 TREATMENT PROGRAM.

25 LASTLY, YOUR HONOR, AND THIS GOES WITHOUT

1 SAYING, IS THAT ANY SENTENCE YOUR HONOR IMPOSES OBVIOUSLY
2 IN THIS CASE IS GOING TO BE CONSECUTIVE TO THE SENTENCE
3 YOU IMPOSE ON THE PROBATION REVOCATION, AND THAT'S JUST
4 SOMETHING WE'RE NOT GOING TO CONTEST. OBVIOUSLY HE'S IN
5 VIOLATION OF HIS SUPERVISED RELEASE AND THERE HAS TO BE A
6 CONSECUTIVE SENTENCE UNDER THE LAW.

7 THE COURT: ALL RIGHT.

8 ALL RIGHT. MS. SMITH, DO YOU WANT TO BE HEARD
9 AGAIN?

10 MS. SMITH: WELL, I JUST WANTED TO CLARIFY THE
11 RECORD. THERE WAS NO PLEA AGREEMENT IN THIS CASE.
12 MR. BLACKWELL REFERRED TO A PLEA AGREEMENT. HE DECLINED
13 TO SIGN THE PLEA AGREEMENT, EVEN THOUGH I TRIED VERY HARD
14 TO CRAFT ONE THAT HE WOULD AGREE TO SIGN. THERE WERE TWO
15 STATEMENTS OF FACTS HE HAD ABOUT RETAINING HIS RIGHTS, SO
16 I'M NOT SURE ABOUT THAT THIRD POINT IN ANY EVENT ON THAT
17 ISSUE.

18 AND THEN, SECONDLY, YOU KNOW, DR. MCNISH HAD NO
19 PROBLEMS WHATSOEVER FINDING THAT HIS SCORE SUGGESTS A LOW
20 CAPACITY FOR CHANGE, THAT'S PAGE 4. WHILE THE CLINICAL
21 PROFILE APPEARS TO BE VALID, IT MAY REFLECT SOME
22 EXAGGERATION OF SYMPTOMS, THAT'S AT PAGE 4 AS WELL. PAGE
23 7, SHE, SHE SAYS, YES, HE'S ANTI SOCIAL, DEMONSTRATED
24 FAILURE TO CONFORM TO SOCIAL NORMS WITH RESPECT TO LAWFUL
25 BEHAVIORS, REPEATED LYING OR CONNING OTHERS FOR PERSONAL

1 PROFIT OR PLEASURE, IMPULSIVITY OR FAILURE TO PLAN AHEAD,
2 CONSISTENT IRRESPONSIBILITY, ET CETERA, ET CETERA. AND
3 FINALLY, I THINK SHE, ON THE BOTTOM OF PAGE 7, IT APPEARS
4 THAT MR. SAYNE DEVELOPED A SENSE OF ENTITLEMENT. AND I
5 THINK SHE'S CORRECT, I DON'T THINK SHE STRUGGLED AT ALL.

6 YOUR HONOR, THANK YOU.

7 THE COURT: MR. SAYNE, COME UP TO THE PODIUM
8 WITH YOUR ATTORNEY, PLEASE.

9 MR. SAYNE, THERE'S BEEN A PRESENTENCE REPORT
10 PREPARED IN THIS CASE. HAVE YOU RECEIVED AND REVIEWED
11 WITH YOUR ATTORNEY A COPY OF THIS PRESENTENCE REPORT?

12 THE DEFENDANT: YES, YOUR HONOR.

13 THE COURT: IS THERE ANYTHING YOU WISH TO SAY
14 TO THE COURT THIS AFTERNOON BEFORE SENTENCE IS IMPOSED.

15 THE DEFENDANT: JUST THAT ENOUGH IS ENOUGH.

16 THE COURT: I'M SORRY.

17 THE DEFENDANT: I'M SORRY --

18 THE COURT: MR. BLACKWELL, YOU MIGHT PULL THE
19 MICROPHONE UP JUST A LITTLE BIT OR RAISE THE PODIUM.

20 MR. BLACKWELL: WELL, YOUR HONOR, I --

21 MS. SMITH: I'M SORRY. I SHOULD HAVE DONE
22 IT.

23 THE DEFENDANT: YOUR HONOR, ENOUGH IS ENOUGH.
24 I MEAN, I DON'T HAVE ANY KIND OF EXCUSE. I DON'T, I DON'T
25 EVEN KNOW COMPLETELY THE REASON WHY I'M HERE RIGHT NOW. I

1 AM EXTREMELY SORRY THAT I CAUSED ALL THIS TROUBLE. I HOPE
2 THAT, YOU KNOW, YOU'LL GET ME THE HELP. I THINK ONE THING
3 THAT IS TALKED ABOUT THAT WAS MAYBE A LITTLE BIT
4 MISUNDERSTOOD, I WAS UNDER A LITTLE MORE STRESS THAN JUST
5 STRAIGHT OUT DEPRESSION. NO EXCUSE, STILL YET, BUT I
6 JUST -- I DON'T KNOW. BUT I WANT HELP. I WANT TO STOP
7 THIS STUFF. I DON'T WANT TO BE HERE. I DON'T WANT TO
8 DISAPPOINT MY FAMILY, HURT MY FAMILY. I MEAN, I'M SURE MY
9 SISTER AND FRIENDS BACK THERE ARE CRYING RIGHT NOW. YOU
10 KNOW, I'VE HURT THEM. I'VE HURT EVERYONE. I JUST ASK YOU
11 THAT GET ME HELP AND HELP ME TO SOLVE THIS. I DON'T WANT
12 TO DO THIS ANYMORE.

13 THE COURT: DO YOU WANT TO ADDRESS ANY OF THESE
14 QUESTIONS THAT I'VE RAISED ABOUT THIS BUSINESS?

15 THE DEFENDANT: I WILL, YOUR HONOR, YES.

16 THE COURT: WELL, I'M LISTENING.

17 THE DEFENDANT: THE BUSINESS WAS A LEGITIMATE
18 BUSINESS. THE MONTHS WEREN'T EXACTLY RIGHT. IT OPENED
19 AROUND AUGUST, IT CLOSED IN NOVEMBER. IT'S -- I DID TRY
20 TO MAKE A GO OF IT.

21 THE COURT: WHAT DID YOU USE ALL THESE
22 THOUSANDS OF DOLLARS FOR?

23 THE DEFENDANT: A LOT OF IT WAS WASTED.

24 THE COURT: WHAT DID YOU USE IT FOR? MR.
25 BLACKWELL SUGGESTED IT WENT TO LEASE PAYMENTS AND BUSINESS

1 LICENSES AND ADVERTISING. DID YOU RUN SOME ADVERTISING?

2 THE DEFENDANT: YES.

3 THE COURT: WHERE.

4 THE DEFENDANT: OAK RIDGE. OAK RIDGER, I
5 BELIEVE IS THE NAME OF THE NEWSPAPER.

6 THE COURT: HOW MUCH DID THAT COST YOU.

7 THE DEFENDANT: FIVE OR \$600 FOR A MONTH'S AD.

8 THE COURT: AND WHAT DID YOUR BUSINESS LICENSE
9 COST, 30, \$40?

10 THE DEFENDANT: ALMOST NOTHING.

11 THE COURT: ALMOST NOTHING, RIGHT. I'M AWARE
12 OF WHAT THEY COST. AND WHAT WAS YOUR MONTHLY LEASE ON THE
13 BUILDING?

14 THE DEFENDANT: \$1,000.

15 THE COURT: AND THAT ACCOUNTS FOR A COUPLE
16 THOUSAND DOLLARS OF THE THOUSANDS YOU GOT FROM YOUR
17 GRANDMOTHER. WHERE DID THE REST OF IT GO?

18 THE DEFENDANT: FIVE THOUSAND WENT INTO THE
19 BUILDING FOR REPAIRS. AGAIN, A LOT OF IT WAS WASTED. I'M
20 NOT GOING TO TRY TO SIT HERE AND SAY I SPENT EVERY NICKEL
21 ON THE BUSINESS, I DIDN'T. PART OF IT WAS JUST ME BLOWING
22 IT. A LOT OF IT DID GO FOR THE BUSINESS, A LOT OF IT WENT
23 FOR THE CHEMICALS, FOR THE TOTAL EMPLOYEES, THE EQUIPMENT
24 TO DO IT WITH, BUT I BLEW QUITE A BIT OF IT.

25 THE COURT: MR. SAYNE, I REALIZE THAT FROM

1 WHERE YOU'RE STANDING THIS DOESN'T SOUND TERRIBLY
2 INCREDIBLE AT ALL, BUT WHAT YOU'RE ASKING ME TO DO IS TO
3 GET YOU HELP TO STOP YOU DOING SOMETHING THAT YOU DON'T
4 KNOW THE REASON WHY YOU'RE DOING IT AND TELLING ME THAT
5 IT'S RELATED TO STRESS, AND I WOULD SUGGEST TO YOU THAT
6 MOST OF THE STRESS WAS CREATED BY EFFORTS TO KEEP FROM
7 BEING DETECTED. I'M GOING TO TELL YOU WHY YOU ARE HERE,
8 YOU ARE HERE BECAUSE YOU CHOSE TO TAKE SOMETHING THAT DID
9 NOT BELONG TO YOU. THAT DIDN'T HAPPEN BECAUSE YOUR MOTHER
10 ABANDONED YOU OR BECAUSE YOUR GRANDFATHER WAS A
11 MOONSHINER.

12 THE DEFENDANT: NO, SIR.

13 THE COURT: OR BECAUSE YOU HAD A DIFFICULT
14 CHILDHOOD. IT DIDN'T HAPPEN FOR ANY OF THOSE REASONS. IT
15 HAPPENED BECAUSE ROBERT SAYNE MADE A CONSCIOUS CHOICE TO
16 DO WHAT HE DID.

17 THE DEFENDANT: YOU'RE RIGHT.

18 THE COURT: SO WHY AM I HEARING ALL THESE
19 EXCUSES?

20 THE DEFENDANT: I DON'T --

21 THE COURT: WHAT'S WRONG WITH SAYING I CHOSE TO
22 DO IT, I KNEW IT WAS WRONG, I KNEW I WAS TAKING SOMETHING
23 THAT DIDN'T BELONG TO ME. YOU ARE AN INTELLIGENT YOUNG
24 MAN, MR. SAYNE. IT TOOK AN INTELLIGENT PERSON TO COME UP
25 WITH THIS SCHEME AND TO EXECUTE THIS SCHEME. WHY IS IT

1 THAT YOU DON'T CHOOSE TO PUT YOUR TALENTS TO USE IN
2 PRODUCTIVE PURSUITS AS OPPOSED TO CRIMINAL PURSUITS? WHAT
3 MAKES IT SO HARD FOR YOU TO MAKE THAT CHOICE?

4 THE DEFENDANT: THERE IS NO EXCUSE. I'M NOT
5 TRYING TO LAY BLAME ON ANYONE.

6 THE COURT: YOU'RE ASKING ME TO GET YOU HELP.

7 THE DEFENDANT: YES.

8 THE COURT AND YOU NEED TO UNDERSTAND THAT IT
9 STARTS WITH YOU. YOU NEED TO UNDERSTAND THAT YOU'VE MADE
10 CONSCIOUS CHOICES HERE. I SENT YOU TO PRISON ONCE BEFORE,
11 AND LESS THAN 30 DAYS, OR MAYBE JUST A FEW MORE THAN 30
12 DAYS, ROUGHLY 30 DAYS AFTER YOUR RELEASE FROM CONFINEMENT,
13 YOU PROVIDE A MONTHLY REPORT WITH THE PROBATION OFFICER
14 THAT'S FALSE. NOW, ONE CONCLUSION I CAN DRAW FROM THAT IS
15 THAT YOU DIDN'T LEARN ANYTHING EXCEPT HOW TO WORK THE
16 SYSTEM.

17 IN YOUR LETTER AND IN EVERYTHING ELSE I'M
18 HEARING HERE, THE MESSAGE IS I WANT TO DO THE RIGHT THING,
19 BUT I JUST CAN'T. I CAN'T DO THE RIGHT THING. I MAKE A
20 MESS OUT OF THINGS. I'M A FAILURE. I DIG MY HOLE DEEPER
21 BY DOING SOMETHING WRONG OR ILLEGAL. IT WOULD BE A VERY
22 SIMPLE MATTER, MR. SAYNE, IF THERE WERE SIMPLY SOME MENTAL
23 DEFECT THAT I COULD GET YOU TREATMENT FOR THAT SOME DOCTOR
24 COULD CURE. NO DOCTOR CAN CURE THIS UNTIL YOU FIRST
25 UNDERSTAND THAT SOCIETY'S RULES ARE THERE FOR A REASON.

1 I MENTIONED A COUPLE OF LITTLE THINGS HERE THAT
2 WERE TROUBLING JUST A MINUTE AGO. THE WHOLE ISSUE ABOUT
3 THE OWNERSHIP OF THIS BUSINESS IS TROUBLING. IF I HAD TO
4 FIND TODAY BY A PREPONDERANCE OF THE EVIDENCE THAT THERE
5 EVER WAS SUCH A BUSINESS THAT EXISTED FOR ANY PURPOSE
6 OTHER THAN SCAMMING THIS COMPANY, I DON'T THINK I COULD
7 MAKE THAT FINDING. ON THE ONE HAND, I'M BEING TOLD THAT
8 YOU'RE DEPRESSED, AND IN FACT YOU TOLD THE PROBATION
9 OFFICER THAT YOU WERE SUFFERING FROM STRESS, ANXIETY AND
10 DEPRESSION DUE TO YOUR CURRENT CIRCUMSTANCES; AND YET WHEN
11 YOU GO FOR A PSYCHOLOGICAL EVALUATION AND THE EXAMINER
12 ASKS YOU ABOUT DEPRESSION, YOU DENY SYMPTOMS OF
13 DEPRESSION.

14 HERE'S THE PROBLEM THAT YOU HAVE CREATED, MR.
15 SAYNE, AS I INDICATED TO MR. BLACKWELL, WHAT YOU HAVE DONE
16 HERE IS CREATE A TEN YEAR RECORD OF LYING, CHEATING,
17 STEALING, CONNING PEOPLE, TAKING THINGS THAT DON'T BELONG
18 TO YOU; AND IT IS NOT THE NUMBER OF CONVICTIONS THAT YOU
19 SUSTAINED THAT IS TROUBLING TO ME, IT IS THE TYPE OF
20 CONVICTIONS BECAUSE EVERY ONE OF THEM HAVE INVOLVED
21 DECEPTION AND TAKING FROM OTHER PEOPLE THINGS THAT DO NOT
22 BELONG TO YOU. NOW, THAT'S THE RECORD YOU HAVE CREATED
23 FOR THE LAST TEN YEARS, AND YET I'M ASKED TO BELIEVE THAT
24 NOW IN THE PROCESS YOU HAVE FINALLY COME TO THE REALI-
25 ZATION THAT YOU HAVE BEEN MAKING THE WRONG DECISIONS AND

1 THAT YOU NEED HELP SO THAT YOU WON'T MAKE THOSE BAD
2 DECISIONS IN THE FUTURE. YOU UNDERSTAND HOW HARD IT IS
3 FOR ME TO ACCEPT THAT EXPLANATION?

4 THE DEFENDANT: YES, YOUR HONOR, I CAN SEE
5 THAT.

6 THE COURT: I WANT TO ACCEPT IT BECAUSE I
7 PREFER NOT TO PUT PEOPLE IN JAIL TO PROTECT THE PUBLIC,
8 I'D PREFER THAT WE DEAL WITH THE CAUSES TO THE EXTENT WE
9 CAN; BUT YOU CANNOT CHALK UP TO DEPRESSION OR BAD UP-
10 BRINGING OR DRUG ABUSE ALL THESE DECISIONS THAT YOU'VE
11 MADE OVER THE LAST DECADE.

12 THE DEFENDANT: IT WAS NEVER --

13 THE COURT: WHEN YOU WRITE A WORTHLESS CHECK,
14 YOU'RE TAKING FROM SOMEBODY SOMETHING THAT DOESN'T BELONG
15 TO YOU. WHEN YOU COMMIT WIRE FRAUD, YOU ARE TAKING FROM
16 SOMEBODY OR SOME ENTITY SOMETHING THAT DOES NOT BELONG TO
17 YOU.

18 MR. BLACKWELL: YOUR HONOR, IF I COULD SAY, AND
19 THE COURT KNOWS THIS FROM THE PRESENTENCE REPORT, THAT MR.
20 SAYNE HAS NEVER DENIED DOING WHAT HE DID, WHETHER IT BE IN
21 FEDERAL COURT OR WHETHER IT BE IN STATE COURT. HE'S TAKEN
22 RESPONSIBILITY FOR THAT. THE QUESTION HE'S ASKED TO ME IS
23 WHY DO I DO IT? WHY DO I MAKE THE DECISION NOT TO USE THE
24 FACULTIES THAT I HAVE AND THE ABILITY THAT I HAVE TO MAKE
25 THE RIGHT DECISIONS? HE'S NEVER TRIED TO HIDE BEHIND NOT

1 BEING RESPONSIBLE FOR THE ACTS HE'S COMMITTED. IT'S --

2 THE COURT: I UNDERSTAND THAT, MR. BLACKWELL;
3 BUT THERE ARE TWO POSSIBLE EXPLANATIONS FOR WHY MR. SAYNE
4 DOES WHAT HE DOES. ONE IS THAT THERE TRULY IS SOMETHING
5 WRONG WITH HIM.

6 MR. BLACKWELL: YES, SIR.

7 THE COURT: THE OTHER IS THAT HE'S CHOSEN TO DO
8 IT.

9 MR. BLACKWELL: YES, SIR.

10 THE COURT: IT'S JUST ABSOLUTE DISREGARD FOR
11 OTHER PEOPLE'S RIGHTS, AND THAT'S PRETTY CLOSE TO WHAT
12 DR., OR TO WHAT DR. MCNISH SAYS HERE. SHE DESCRIBES HIM
13 AS HAVING AN ANTISOCIAL PERSONALITY DISORDER. HE HAS
14 DEMONSTRATED FAILURE TO CONFORM TO SOCIAL NORMS WITH
15 RESPECT TO LAWFUL BEHAVIORS, REPEATED LYING OR CONNING
16 OTHERS FOR PERSONAL PROFIT OR PLEASURE, IMPULSIVITY OR
17 FAILURE TO PLAN AHEAD, A SENSE OF ENTITLEMENT; AND SHE
18 EVEN NOTES THAT HIS REQUEST FOR THE PSYCHOLOGICAL ITSELF
19 APPEARS TO BE SELF SERVING, A BENEFIT ONLY TO HIM.

20 MR. BLACKWELL: WELL, OF COURSE, HE'S THE ONE
21 THAT'S GOING TO BENEFIT OR NOT BENEFIT FROM THE EVALUA-
22 TION; BUT WE DON'T DISAGREE WITH WHAT THE COURT JUST SAID,
23 BUT, AGAIN, THE CORE QUESTION IS WHY HAS HE MADE THE
24 DECISIONS IN THE PAST TO DO WHAT HE DID. WE'RE NOT TRYING
25 TO EXCUSE ANYTHING. HE'S TAKEN FULL RESPONSIBILITY. HE

1 WANTS TO UNDERSTAND THE WHY, SO IF THERE IS AN OPPORTUNITY
2 WITH TREATMENT AND THERAPY TO CHANGE, THAT'S WHAT HE WANTS
3 TO DO, HE WANTS TO CHANGE.

4 THE COURT: THAT'S A PRETTY HARD SALE, MR.
5 BLACKWELL, THAT'S MY POINT. IT'S PRETTY HARD TO SELL THAT
6 HE NOW WANTS TO CHANGE AFTER THIS TEN YEAR HISTORY OF ALL
7 THAT'S GONE ON HERE.

8 MR. BLACKWELL: YOUR HONOR, I'M NOT TRYING TO
9 SELL ANYTHING. WHAT I'M SIMPLY TRYING TO DO IS SUGGEST TO
10 THE COURT THAT, AS I SAID EARLIER, WE DON'T SIMPLY THROW A
11 HUMAN BEING AWAY, WE TRY TO HELP THAT HUMAN BEING, WE TRY
12 TO PUT THAT PERSON IN THE BEST POSITION WE CAN. ALL I'M
13 TRYING TO DO WITH THE COURT IS GIVE YOU AS MUCH
14 INFORMATION TO HIS BACKGROUND SO THAT IF THERE IS AN
15 UNDERSTANDING AS TO WHY HE COMMITTED THE CRIMES THAT HE
16 DID, ONCE WE GET TO THAT POINT, THEN AS DR. MCNISH SAYS,
17 THERE IS THE POSSIBILITY FOR TREATMENT. THERE IS THE
18 POSSIBILITY WITH COGNITIVE THERAPY BEHAVIOR THAT MR. SAYNE
19 CAN UNDERSTAND THE WHY AT SOME POINT AND RESIST DOING IF,
20 IF AN URGE COMES UP.

21 IT'S ALMOST LIKE AN ADDICTION, YOUR HONOR,
22 WHETHER IT BE A DRUG ADDICTION OR AN ADDICTION TO ANYTHING
23 ELSE IS; AND THAT'S WHAT A PERSONALITY DISORDER LIKE THIS
24 IS. WE ARE SIMPLY TRYING TO ANSWER THAT CORE QUESTION AND
25 DETERMINE WHETHER HIS LIFE IS SALVAGEABLE WITH COGNITIVE

1 THERAPY TREATMENT.

2 THE COURT: MR. SAYNE, HERE'S THE DEBATE I'M
3 HAVING RIGHT NOW, I'VE BEEN SITTING HERE TRYING TO
4 FORMULATE THE RECOMMENDATION THAT I WOULD SEND TO THE
5 BUREAU OF PRISONS, I'M GOING TO RECOMMEND TO THE BUREAU OF
6 PRISONS THAT YOU RECEIVE HELP FOR SOME UNSPECIFIED PROBLEM
7 THAT CAUSES YOU TO DO WHAT YOU'VE DONE, AND I'M BEING
8 ASKED TO TRUST THE BUREAU OF PRISONS TO PROVIDE THAT
9 UNSPECIFIED HELP SO THAT YOU WILL NO LONGER BE A MENACE TO
10 SOCIETY WHEN YOU'RE RELEASED.

11 THE FIRST THING YOU SAID TO ME WAS YOU DON'T
12 UNDERSTAND THE REASON WHY YOU'RE HERE. I DON'T BELIEVE
13 THAT FOR ONE MINUTE. I AM RESISTING THE URGE AT THE
14 MOMENT, MR. SAYNE, TO COME TO THE CONCLUSION THAT THE ONLY
15 WAY I CAN PROTECT OTHERS AND THEIR PROPERTY FROM YOU IS TO
16 PUT YOU IN JAIL FOR THE MAXIMUM AMOUNT OF TIME THAT THE
17 LAW REQUIRES ME TO DO, OR ALLOWS ME TO DO. YOU SIMPLY
18 CANNOT TAKE FROM OTHERS WHAT DOES NOT BELONG TO YOU,
19 PERIOD, PURE AND SIMPLE, END OF DISCUSSION, AND I SIMPLY
20 DO NOT BELIEVE THAT THE REASON YOU HAVE BEEN TAKING FROM
21 OTHERS FOR THE LAST DECADE IS BECAUSE SOMETHING IS WRONG
22 WITH YOU. THERE IS NO EVIDENCE IN THIS RECORD THAT YOU
23 ARE MENTALLY INCOMPETENT TO THE POINT THAT YOU DO NOT HAVE
24 RESPONSIBILITY FOR YOUR OWN ACTIONS. THE RESPONSIBILITY
25 FOR WHAT'S HAPPENED HERE LIES WITH YOU AND YOU ALONE. YOU

1 HAVE VICTIMIZED EVERYBODY THAT YOU HAVE COME IN CONTACT
2 WITH, INCLUDING YOUR GRANDMOTHER, AND I THINK I SAID THIS
3 AT THE LAST SENTENCING HEARING -- YOU STOLE FROM HER THEN
4 TOO; DIDN'T YOU?

5 THE DEFENDANT: IN EFFECT, YEAH.

6 THE COURT: IN EFFECT? WHAT DO YOU MEAN IN
7 EFFECT? YOU STOLE FROM HER, TOOK SOMETHING THAT DIDN'T
8 BELONG TO YOU; DIDN'T YOU?

9 THE DEFENDANT: YES.

10 THE COURT: MR. SAYNE THAT'S PART OF THE
11 PROBLEM HERE. YOU NEED TO FACE UP TO WHAT YOU'VE BEEN
12 DOING. DON'T SAY IN EFFECT THIS OR THAT OR I MIGHT HAVE
13 DONE THIS OR THAT OR MAYBE I DID THAT, JUST FACE UP TO THE
14 FACT THAT YOU HAVE BEEN STEALING FROM EVERYBODY YOU'VE
15 COME IN CONTACT WITH.

16 THE QUESTION IS, AS I SAID JUST A MINUTE AGO,
17 DO I HAVE TO PUT YOU IN FEDERAL PRISON FOR 25 YEARS IN
18 ORDER TO STOP THAT? I MUST SAY THAT I AM SURPRISED AT
19 WHAT I'VE HEARD FROM YOU, NOT WHAT I'VE HEARD FROM YOUR
20 LAWYER, BUT WHAT I'VE HEARD FROM YOU TODAY. I DON'T KNOW
21 WHY I'M HERE, I NEED HELP.

22 I AM RELUCTANT TO IMPOSE SENTENCE THIS
23 AFTERNOON. WHAT I'M INCLINED TO DO HERE, MR. SAYNE, IS TO
24 POSTPONE THE IMPOSITION OF SENTENCING SO THAT I CAN TAKE
25 SOME TIME TO CONSIDER THIS IN A MORE DETACHED FASHION. I

1 DO NOT WANT TO THROW AWAY A LIFE, AS MR. BLACKWELL SAID.
2 I WOULD MUCH PREFER TO IMPOSE A SENTENCE THAT WILL SERVE
3 NOT ONLY THE PUBLIC'S NEEDS, BUT YOURS AS WELL. I WOULD
4 MUCH PREFER TO IMPOSE A SENTENCE THAT GIVES ME SOME SENSE
5 OF HOPE THAT AFTER YOU SERVE THIS PRISON SENTENCE, THAT
6 THINGS WOULD IN FACT BE DIFFERENT, THAT YOU WOULD PUT YOUR
7 OBVIOUS TALENT TO MORE PRODUCTIVE USE. THAT'S WHAT I'D
8 LIKE TO DO; BUT IF I CAN'T DO THAT, THEN THE ONLY OPTION
9 I'VE GOT IS TO IMPOSE A SENTENCE THAT PROTECTS THE PUBLIC
10 FROM YOU. AND I REALLY DON'T WANT TO DO THAT, MR. SAYNE.
11 AND I KNOW THAT WHEN I PUT A MATTER OFF IT INCONVENIENCES
12 EVERYBODY INVOLVED, AND I APOLOGIZE FOR THAT.

13 WE HAVE SPECIALLY SET SOME CASES FOR WEDNESDAY,
14 APRIL 28TH. COUNSEL, ARE YOU AVAILABLE THEN?

15 MS. SMITH: YES, YOUR HONOR, I AM.

16 MR. BLACKWELL: YOUR HONOR, IS THAT IN THE
17 MORNING OR AFTERNOON?

18 THE COURT: WE CAN DO IT EITHER ONE.

19 MR. BLACKWELL: IF THE COURT COULD DO IT IN THE
20 AFTERNOON, THAT WOULD BE FINE. I'VE GOT A MATTER IN
21 KNOXVILLE AT 9:00 IN THE MORNING.

22 THE COURT: ALL RIGHT. MR. SAYNE, I'M GOING TO
23 RESET THIS MATTER FOR THE IMPOSITION OF SENTENCE AT 1:30
24 P.M. ON WEDNESDAY, APRIL 28, AND I WILL IMPOSE SENTENCE AT
25 THAT TIME. I'M GOING TO REVIEW AGAIN THE MATERIALS THAT

1 HAVE BEEN PROVIDED TO ME, THINK ABOUT WHAT I'VE HEARD AND
2 SEEN TODAY; AND I WOULD SUGGEST TO YOU, MR. SAYNE, THAT
3 YOUR TIME COULD BE PRODUCTIVELY SPENT NOT LOOKING FOR SOME
4 UNDETERMINED ILLNESS OR DEFECT THAT CAUSES YOU TO MAKE THE
5 CHOICES YOU MAKE, BUT TO A DETACHED CONSIDERATION OF WHAT
6 IT IS ABOUT YOU, NOT WHAT IT IS ABOUT SOMEBODY ELSE, BUT
7 WHAT IT IS ABOUT YOU THAT MAKES IT DIFFICULT FOR YOU TO
8 FOLLOW THE RULES; AND THINK BACK TO WHEN THAT FIRST REPORT
9 WAS DUE AFTER YOU WERE RELEASED FROM PRISON AND ASK
10 YOURSELF WHAT IT IS THAT CAUSED YOU TO CHOOSE TO START
11 FABRICATING EARNING STATEMENTS AND FALSIFYING MONTHLY
12 REPORTS. I AM CONVINCED OF ONE THING, IT WAS NOT A MENTAL
13 ILLNESS THAT CAUSED YOU TO DO THAT.

14 COUNSEL, I APOLOGIZE FOR THE INCONVENIENCE, BUT
15 I'LL IMPOSE SENTENCE ON THE 28TH.

16 MR. BLACKWELL: YOUR HONOR, IF THE COURT WOULD
17 ALLOW ME TO FILE IN THE RECORD THE LETTER FROM THE CAPTAIN
18 OF THE CLAIBORNE COUNTY SHERIFF'S OFFICE.

19 THE COURT: YOU MAY.

20 MS. SMITH, JUST FOR FUTURE REFERENCE, THERE WAS
21 A REASON WHY I WAS ASKING THE QUESTIONS ABOUT YOUR
22 RECOMMENDATION, IT WAS NOT THAT I HAD NOT READ YOUR
23 SENTENCING MEMORANDUM, IT WAS THE PROCEDURAL POSTURE HERE
24 BECAUSE I WAS TRYING TO DETERMINE WHETHER OR NOT YOU WERE,
25 IN EFFECT, SEEKING AN UPWARD DEPARTURE OR WHETHER YOU WERE

1 SEEKING A VARIANCE. AND I KNOW THAT EVEN THE APPEALS
2 COURTS HAVE USED THOSE TERMS SOMEWHAT INTERCHANGEABLY, BUT
3 IT APPEARS TO ME THAT WHAT YOU'RE ASKING FOR IS, FIRST OF
4 ALL, A DEPARTURE FROM THE GUIDELINE RANGE THAT OTHERWISE
5 APPLIES, IN OTHER WORDS A GUIDELINES DEPARTURE UNDER
6 CHAPTER 4 OF THE GUIDELINES.

7 MS. SMITH: RIGHT.

8 THE COURT: AND THEN YOU'RE ASKING FOR A
9 VARIANCE IN ADDITION TO THAT.

10 MS. SMITH: THAT'S CORRECT, YOUR HONOR, FOUR
11 LEVELS PLUS AN ADDITIONAL SIX MONTHS OR SEVEN MONTHS,
12 THAT'S CORRECT.

13 MR. BLACKWELL: AND, YOUR HONOR, THAT WAS THE
14 WAY I UNDERSTOOD IT TOO.

15 THE COURT: AND THAT'S JUST -- I'VE NOT SEEN IT
16 RAISED IN QUITE THAT FASHION, BUT I UNDERSTAND WHAT YOU'RE
17 ASKING HERE.

18 ALL RIGHT. WE'LL COME BACK ON THE 28TH OF
19 APRIL THEN.

20 (PROCEEDINGS ARE ADJOURNED AT 4:50 P.M.)

21 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
22 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

23

24
25 KAREN J. BRADLEY/S
SIGNATURE OF COURT REPORTER

3/22/11
DATE

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